

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 259/2008

This the 14 th day of October, 2009

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

Thomas C.C. S/o Chakkoru C. T.
(Retired Law Officer, South Western Railway
Divisional Office Compound, Hubli-580 023)
residing at Chittilappilly House
TC 46/1647, Aranattukara, Pullazhi PO
Ayyanthole, Trichur Dist.

.. Applicant

By Advocate Mr. T.C. Govinddaswamy

Vs.

- 1 Union of India represented by
the Secretary to the Govt. Of India
Ministry of Railways
Railway Board, New Delhi.
- 2 The General Manager
South Western Railway
Hubli-580 020
- 3 The Chief Personnel Officer
South Western Railway,
Hubli-560 020
- 4 The Chief Administrative Officer
South Western Railway
Bangalore Cantonment
Bangalore.

Respondents

By Advocate Mr. Thomas Mathew Nellimootttil.

The Application having been heard on 7.10.2009 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE TRIBUNAL

The applicant, a retired Railway Law Officer, challenges Annexure A-10 letter rejecting his representation for promotion to the post of Senior Law Officer.

2 The applicant who commenced service as Station Master in the Southern Railway on 19.3.1973, was subsequently appointed as Law Assistant, promoted to the post of Chief Law Assistant and was working at Divisional Office at Trivandrum. While so, he was transferred to the Construction Organisation at Bangalore w.e.f. 29.6.1999 and superannuated on 30.4.2008. According to the applicant, the Railway Administration issued OM No. SWR (HQ)P.133/CN/BNC dated 29.3.2004 upgrading the post of Chief Law Assistant as Assistant Law Officer in Legal Cell till 31.3.2004 (A4) extended from time to time. Thus, he was discharging all the duties of Assistant Law Officer from 29.3.2004 till regular selection was held (A-5) in which he alone came out successful. He was posted as Assistant Law Officer at HQ Law Branch at Hubli. The Senior Commercial Manager looking after the duty of Law Officer, was relieved and the applicant assumed charge on 27.12.2005. The post was redesignated as Law Officer (A-6). While so, the Railway Board sanctioned one post of Sr. Law Officer for South Western Railway (A7). The applicant submitted representation for ad hoc promotion against the said post as no other eligible candidate was available for promotion on regular basis (A-8). The grievance of the applicant is that ad hoc appointments should have been made to meet administrative exigencies, the respondents had adequate power to relax the residency period and recommendation in his behalf was made by the Head of the Law Department (A-9). On coming to know about the disposal of his representations he submitted another representation (A-11) which was not disposed of till his retirement. Hence he filed this Application to quash Annexure A-10 and to

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declare that he is entitled to be granted the upgraded post of Assistant Law Officer w.e.f. 29.3.2004 and on completion of three years service, HE is eligible to be promoted to the post of Senior Law Officer w.e.f. 29.3.2007. He has built up his case on the following grounds (a) the 3rd respondent is not competent to issue A-10 (b) the matter was never taken up with the competent authority, (c) the applicant had virtually discharged the duties of Senior Law Officer being the seniormost Law Officer (d) if the period from the date of upgradation of the post held by the applicant is counted, he would have completed three years residency period on 28.3.2007, (e) the General Manager is competent to promote a Grade- B Officer to Senior Scale on ad hoc basis, (f) necessary relaxation could have been given by the competent authority.

3 Per contra, the respondents raised the preliminary objection of maintainability as the applicant retired from service from South Western Railway with Headquarters at Bangalore cantonment and that after his retirement he is practicing law at Bangalore courts. They denied that the applicant was the seniormost Law Officer. They submitted that the upgradation of one post of Chief Law Assistant to Assistant Law Officer (A4) was not operated at all, the post was not extended beyond 31.3.2004 and that mere sanction of the post will not automatically give the benefit to any person unless the promotion order is issued.. They stated that the upgradation of the post of Assistant Law Officer is subject to screening process consisting of written examination and viva voce by calling the seniormost Law Assistant. In the case of major departments the minimum service of 6 years is required for Group-B officers and 3 years for Group-A officers. But in small departments like the Law, minimum 8 years of service as Assistant Law Officer is required for regular promotion to senior scale. They further submitted that since there was no departmental candidate eligible for promotion, they have approached the Railway Board for filling up the post by deputation.

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4 The applicant filed rejoinder stating that after his retirement he has shifted residence to his native place Trichur and that his present stay at Bangalore is temporary to lookafter his daughter who has been advised total bed rest. He reiterated his averment in the O.A. that he was the only Chief Law Assistant in the entire zonal railway on its formation. He also produced orders extending the currency of the post (Annexure A-14 series) to show that the post continued after 31.3.2004.

5 The respondents filed additional reply statement to the rejoinder admitting that the applicant was the lone Chief Law Assistant available in the South Western Railway at the time of formation of the new Zone on 1.4.2003. But the cadre was kept open upto 31.10.2003 and that Shri Vasantha Kumar Natesan working in the Western Railway came over to South Western Railway on option during September, 2003 well before the date of closure of the cadre. As on 1.11.2003, Shri Natesan and the applicant were the two Chief Law Assistants available in South Western Railway and the applicant was junior to Shri Natesan.

6 The applicant filed additional rejoinder.

7 We have heard learned counsel appearing on both sides and have gone through the pleadings.

8 The applicant has filed M.A.360/2008 to condone the delay in filing the O.A. In view of the averments in the M.A the delay of 27 days in filing the O.A is condoned.

9 The learned counsel for the applicant argued that the applicant was discharging the duties of Assistant Law Officer from 29.3.2004 even though he was regularly promoted only by an order dated 8.11.2005. The Railway Board had created a post of Senior Law Officer for South Western Railway after having found that there is need for such a post and that the applicant was discharging the duties being the seniormost Law Officer. Therefore for counting the residency period he had completed three years as on 28.3.2007. The learned counsel further argued that the applicant's case was not considered by the competent authority.



10 The learned counsel for the respondents on the other hand argued that the applicant was not the seniormost in the cadre of Chief Law Assistant therefore, he could not have discharged the duties of Assistant Law Officer. However, in the selection conducted in 2005 he alone came out successful and was empanelled as Assistant Law Officer (A5). As regards regular promotion to Senior Law Officer, the learned counsel submitted that minimum 8 years of service as Assistant Law Officer is required and for ad hoc promotion minimum 3 years service is required. The applicant having been appointed to Group-B only from 27.12.2005, he has not completed even 3 years of service to be promoted to the post of Senior Law Officer on ad hoc basis.

11 There is no dispute that one post of Assistant Law Officer was sanctioned and created w.e.f. 31.3.2004 on the basis of proposal sent by the Construction Organisation. The post has to be filled up only by due selection process consisting of written examination and viva voce. It is a fact that the selection was delayed on administrative grounds. Till the selection is completed, the post was not operated. The selection was conducted on 25.8.2005 wherein the applicant alone came out successful. Therefore, the applicant can count service from the date of selection only. In that view of the matter, he has not completed the minimum period of three years to be considered for promotion to the post of Senior Law Officer on ad hoc basis.

12 The grievance of the applicant is that despite the availability of the sanctioned post of Assistant Law Officer, having been doing the work of Assistant Law Officer and being the sole eligible person available for promotion, he has not been promoted. Had he been promoted in time, he could have completed three years of service to be promoted to the post of Law Officer on ad hoc basis. But the respondents have denied that he was the sole person eligible for promotion. Another person senior to the applicant was available. The respondents have to conduct selection in accordance with the rules. The administrative delay on the part of the authorities to complete selection process which included written examination

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and viva voce, might have caused him the opportunity to be promoted on adhoc basis. In our view, the fact of certain administrative delay in selection cannot be held to be arbitrary, discriminatory and violative of the constitutional guarantees enshrined in Article 14 and 16 of the Constitution. Nevertheless, the post was sanctioned much earlier. One has to be appointed to the post to claim service benefits. The applicant was not the sole/senior person eligible to be appointed. The applicant was selected for appointment only after completion of the selection process. It may be true that the applicant might have been doing the work of Assistant Law Officer but there is no administrative order to do so. In the absence of any order appointing him to the post, he has not legally worked in the post.

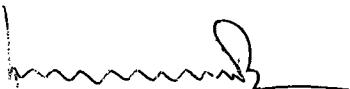
The Courts/Tribunal cannot compel the employer to make appointment to a post, that too, on ad hoc basis. It is for the Department to decide whether any appointment is to be made or not, in the interest of the organisation. The applicant has no legal ground to claim any ad hoc promotion.

13 Having heard the learned counsel appearing for the parties and after perusal of the pleadings we are of the considered view that the applicant has not made out a case. The O.A. is dismissed. No costs.

Dated 14th October, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER