

CE AND ADMINISTRATIVE TRIBUNAL

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Original Application No. 414 of 1991

S.K. Sankhpal,

Applicant.

Versus

Union of India & Others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Upadhyaya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

the applicant who was working in the R.D.S.O. has approached this Tribunal praying that the Recruitment and Promotion Rules for D.S.K. I framed by the Director-General, R.D.S.O. framed in accordance with the Rules framed by the Railway Board for the post, and the Director-General, R.D.S.O. may be directed to amend the RPF Rules making the post of D.S.K. I as non-selection consistent with the RPF Rules framed by the Railway Board and further the Director-General, R.D.S.O. may be directed not to make any promotion/appointment on the post of D.S.K. I on the basis of the present discriminatory Rules i.e. by way of selection and to quash the notice dated 27.9.91.

2. During the service of R.D.S.O. in Railway Material Checking Clerk, the applicant, thereafter was promoted as Store Distributor and transferred to the post of Assistant Store Keeper in

1-79 in the pay scale of Rs. 550-750. The non-liferarial posts of Store Department are classified by the Railway Board vide order dated 7.11.1985 which is as under:

S.no.	Name of the post	Pay scale	Mode of appointment/ promotion.
I.	D.S.R. III	425-700	Non-selection.
II.	D.S.R. II	550-750	Selection
III.	D.S.R. I	700-900	Non-selection.

The scale for the posts were also subsequently revised and the Rules mentioned above were framed by the Director General, R.D.S.O and were published on 27.10.87, which are as under:

S.no.	Name of the post	Pay scale	Mode of appointment/ promotion.
1.	D.S.R. III	1400-2300	Selection
2.	D.S.R. II	1600-2600	Non-selection
3.	D.S.R. I	2000-3200	Selection

According to the applicant the amendment in the rules for Recruitment and Promotion is ultra vires, illegal and inoperative, as the rules framed by the Railway Board will prevail over the rules framed by the Director, Genl R.D.S.O. regarding the above set of posts

3. The respondents have contended that the applicant cannot challenge the Recruitment and Promotion Rules which were framed in the year 1961 by RDSO and subsequently revised in the year 1979 and 1987, at this belated stage the year 1991. Originally, the applicant was appointed as Khalasi (class IV) in R.D.S.O. w.e.f. 12.3.57 and thereafter he was promoted as Lab Helper in the scale

Rs 35-60 (P.S.), Material Checking Clerk in the scale of Rs 55-85, Store Distributor in the scale of Rs 110-180 (A.S.) Junior Store Keeper in the scale of Rs 205-280 (A.S.) Assistant Store Keeper D.K. Grade III in the scale of Rs 425-700 (A.S.) the post which he has been holding since 30.11.1979. It has been pointed out that the R.D.S.O. being the R&D organisation of the Indian Railways, the rules were framed different to Railways as per recommendations of Railway Reforms Committee so that by a method of selection, we should get the better and qualified persons, and in R.D.S.O. the Recruitment is made from the lower category of employees which is not in the Zonal Railways and had the rules of Zonal Railways been followed in R.D.S.O., the petitioner would have even not become eligible for consideration of D.S.K.I post. The letter dated 17.11.85 has been issued by the Railway Board to the General Managers of all the Railways and others and has been endorsed to the Director General R.D.S.O. and in view of this letter it is quite clear that this letter is not applicable to the applicant. The R.D.S.O. vide letter dated 24.7.87, followed different method in regard to the recruitment/promotion of Stores department and it is not the intention that the changes may be carried out in the method of recruitment, merely to fall in line with the prevailing method of Zonal Railways/Production Units as per the instructions contained in the Railway Board's letter dated 7.11.85. The respondents further stated that, as far as possible,

uniformity has been maintained, so far as the method of recruitment is concerned. In R.S.S.O., the promotions are made from the lower categories of posts, the D.S.O. I has been classified as selection post to have a suitable and efficient candidate to hold the post, being the incharge of the Department, the recruitment and promotion rules framed by Director General, R.S.O. for D.S.O. Grade III, II & I are neither arbitrary nor unreasonable and discriminatory and violative of the Article 14 and 16 of the Constitution of India.

4. The learned counsel for the applicant contended that the Director has got no power to frame rules. This contention has got to be rejected as the original rules were framed by the Director and revised twice. It is because of this amendment the applicant is aggrieved. ~~The applicant~~ cannot challenge the rules which were framed by the Director long ~~ago~~ ago. Even otherwise, the rule making power has conferred the ^{and} power to make rules/~~xx~~ the Director has full power to frame the rules and the plea has got to be rejected. According to the learned counsel for the applicant, in view of the statutory provisions i.e. para 210 of the Railway Establishment Manual, which has been framed by the Railway Board and the provisions of rule framed by the Railway Board contained in Indian Railway Establishment Manual will prevail over the rules framed by the R.S.S.O. and in this connection he placed reliance on para 210 of the Railway Establishment Manual which reads as under:

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"DECLARATION OF SELECTION POSTS"

List of selection posts and non-selection posts is contained in Appendix 6. In case of running staff, running allowances as represented by 50% of the basic pay in the pre authorised scale of pay plus 30% in respect of authorised scale of pay shall be added to pay scale for the purpose of classifying as selection posts. Any deviation from the above list will need the prior approval of the Railway Board."

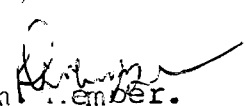
The learned counsel for the applicant contended that the Director General, R.D.S.O. did not seek any prior approval of the Railway Board and as such the rules framed by the Director General have no validity and the same are not enforceable and have no authority of law. He so, when the Railway Board circular dated 26.9.81 provides "the General Manager in railways has full power for group C and D under their control provided that are not inconsistent with any rule made by the President or Ministry of Railways and as such the Director General had no power. In this connection, it may be pointed out that the General Manager has got power in the matter of R.D.S.O. and the power of General Manager are exerciseable by the Director, General, R.D.S.O. which has framed the rules earlier. The circular itself provides that rules are to be framed in respect of those who are under the control of General Manager and there is

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no such denial of the fact that the R.D.S.O. is a separate body. As far as the rules framed under rule 210 are concerned obviously, the same applies in respect of railway staff ~~and~~ as such. The clarification given by the Railway Board vide letter dated 8.5.87 is very clear on the point which states that R.D.S.O. has different method in regard to recruitment and promotion and the clarification itself indicates that the Railway Board itself has made R.D.S.O. empowered and free to have its own rules.

5. Accordingly, in our opinion, the amendment is perfectly valid and Director General, R.D.S.O. was within its competence to make amendment. It was not a case of substantive amendment. It was a case of making selection and non selection post, thereby change of procedure of selection post. Accordingly, we do not find any ground for interference and the application deserves to be dismissed and the same is accordingly dismissed. No order as to costs.


Member.


Vice Chairman.

Snakeel/-

Lucknow: Dated 3/2/1993.