

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH

Tuesday the 9th day of May 2000

PRESENT

The Hon'ble Shri D.V.R.S.G.DATTATREYULU, MEMBER (J)
and

The hon'ble Shri S.MANICKAVASAGAM, MEMBER (A)

O.A.No. 75 of 1991

K.B.Kohli .. Applicant

Vs.

1.Union of India through Chairman
Railway Board, Rail Bhawan, New Delhi

2.The Secretary, Railway Board, Rail Bhawan
New Delhi

3.The Director General
RDSO, Lucknow .. Respondents

Mr.Pratap Singh .. Advocate for the applicant

Mr.A.V.Srivastava.. Advocate for the respondents

Order: Pronounced by the Honourable Shri D.V.R.S.G. DATTAIREYULU
M.L.D.E.(J)

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In this OA the applicant prays for quashing of the following:-

(a) Staff Notice No.E II/JIN/0/30(Mins.) Comp/90 dated 6.9.1990(Annexure A-1)

(b) The Research, Designs and Standards Organisation (Gazetted Ministerial Posts) Recruitment Rules 1968

(c) The Research, Designs and Standards Organisation (Gazetted Ministerial Posts) Recruitment(Amendment)Rules 1990

The applicant further prays for a direction directing the third respondent not to declare the results of the examination held on 9/10-2-1991 and to quash the selection of LDCE and also to dispose of the representations contained in Annexure A-7 dated 16.8.1990.

2. Briefly stated the case of the applicant is as follows. The applicant was working as a Technical Assistant in the Research, Designs and Standards Organisation(RDSO for short) and the same is attached to the Railway Board. It is stated that there were 23 posts of Section Officers(SOs for short). The further promotion to the post of SO(Gazetted Class II ~~in the~~ pay scale of Rs.2000-3500 is 50% by seniority-cum-suitability among Assistants and the remaining 50% by way of holding a Limited Departmental Competitive(LDCE) Examination from among Assistants - vide Annexure A-4. According to the applicant there ~~was~~ ^{are} no promotional avenue for the stenographers-Gr.'C'. Hence two posts of SOs were given to the post of Stenographers-Gr.C. Accordingly the rules were amended and 50% of the posts of SOs will be filled by seniority-cum-suitability from among Assistants and the remaining 50% will be filled up by holding a LDCE from among Assistants and Stenographers-C with ~~experience of~~ 10 years experience in the

respective grades. It is also stated that as per the amended rules from time to time 50% of the posts will be filled by seniority-cum-suitability and the remaining 50% by holding LDCE for Assistants/Stenographers with 5 years in the grade. Certain reservations were made with regard to promotional avenues to each grade.

3. The applicant along with another made a joint representation to the Ministry of Railways ^{Making} that there has been anomaly in that the Scenographers are included in the LDCE for the post of SOas as per Annexure A-7. However the RDSO administration has issued the impugned notification and conducted the examination. Hence the present OA.

4. The applicant has filed Annexures A-1 to A-7 in support of his claim.

5. In the reply filed by the respondents, it is stated that the Rules ^{and} were framed from time to time and also were amended, taking into consideration the various representations of the employees and the rules were framed under Art. 309 of the Constitution. It is the contention of the respondents that the OA is liable to be dismissed as devoid of merit. The reply proceeds to state that the examinations were conducted in pursuance of the notification of the rules and these rules have been framed in accordance with Art. 309 of the Constitution.

6. The reply further states that the Recruitment and Promotion Rules, Pay scales etc. have been framed on the approved principles for the ministerial staff of Railway Board separately and RDSO, with the approval of the UPSC.

It is further stated that the applicant was also given an opportunity to take part in the LDCE but he has not chosen to take part in the examination.

7. When the matter was taken up for final disposal on 4.5.2000, neither the applicant nor his counsel was present. We have heard the learned counsel for the respondents who traversed the history of the rules in detail. Since the pleadings are complete ^{in its name} we have decided to dispose of this OA on merits.

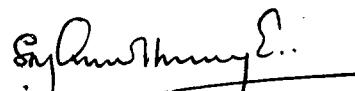
8. The point for consideration is whether the applicant is entitled for any relief in this OA or not. At the outset it may be noted that the prayer of the applicant is for a direction to the respondents to consider his representation. Therefore it is for the department to consider his representation and to take a decision in the matter. Further in the application it is nowhere stated as to how the examinations conducted on 9/10-2-1991 in pursuance of the notification ^{had} infringed any rule or any statutory right of the applicant is affected. Further if there is any violation of any service conditions, the applicant can approach the Tribunal but not on a policy decision taken by the Government which has got powers to frame and amend the rules of recruitment. Seeking promotional opportunities is certainly an aspect of the service conditions and we find that the applicant was also given opportunity to take part in the LDCE and for reasons best known to him he has not taken part in the examination. Further, when the respondents chose to create promotional avenues that cannot be termed as one of the service conditions as affecting the service of the employee. Therefore this is a policy decision with which the Tribunal cannot interfere unless there is any infringement of fundamental right.

9. We further find that this OA is of the year 1991 and what transpired afterwards and what is the decision of the respondents have not been placed before this Tribunal

nor the applicant chose to question them.

10. At the time of arguments the learned counsel for the respondents had referred to and relied on the decision of this Bench of the Tribunal in OA 402/90 in which the same aspect was considered and the same was rejected by an order of this Tribunal. We have perused the above decision and we agree with the submissions made by the learned counsel for the respondents.

11. In the light of the discussion above we hold that the OA is devoid of merit and is dismissed with no order as to costs.



(S. MANICKAVASAGAM)
MEMBER (A)



(D.V.R.S.G. DATLA VENKATESWARA RAYULU)
MEMBER (J)

9.5.2000

nks: