

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE FOURTH DAY OF FEBRUARY, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(J)
Hon'ble Shri L.H.A.Rege Member(AM)

APPLICATION No. 1008/86(T)

H.Khaleemullah Shariff,
R/o Miraj, Distt. Sangli,
Maharashtra.

...

APPLICANT

(Shri.Shantesh Gurradi

...

Advocate)

Vs.

1. The General Manager,
Southern Railway,
Hubli Division,
Hubli.

2. The Divisional Commercial Superintendent,
South Central Railway,
Hubli Division,
Hubli.

3. The Divisional Personnel Manager,
South Central Railway,
Hubli Division,
Hubli.

...

RESPONDENTS

(Shri M.Srirangaiah

...

Advocate)

This application has come up before the court today.

Hon'ble Shri L.H.A.Rege, Member(AM) made the following :

ORDER

This is an application transferred to this Bench by the High Court of Judicature, Karnataka, under Sec.29 of the Administrative Tribunals Act, 1985, wherein the applicant has challenged the impugned order dated 12.9.1983(Annexure-G) reverting him to his substantive post of Server, and has prayed that the respondents be directed to consider his case for regularisation of promotion as Assistant Catering Manager(ACM).

LL

2. The relevant facts necessary to help appreciate the contentions raised in this application are briefly as follows: The applicant was appointed as a Cleaner in the Miraj-Belgaum Dining Car with headquarters at Miraj, in the pay-scale of Rs.70-85 on 27.7.1962. While he was undergoing training as a Coach Attendant at Hubli, he was temporarily promoted to officiate as a Store Clerk in the Catering Department on 19.6.1960, in the pay-scale of Rs.110-180 and was posted to Miraj on an ad hoc basis. The post of Store Clerk in the Catering Department, was later designated as Assistant Catering Manager(ACM), in which capacity, the applicant is said to be currently working.
3. In 1970-71, selection of Class IV staff for Class III in the Catering Department, as Store Clerks, against the quota reserved for them, was considered. The applicant availed of this opportunity of selection and appeared for the written test, in which he obtained the requisite qualifying marks. He also appeared for the viva voce on 30.6.1971. However, as he was not sufficiently senior, he did not figure in the panel published by the Chief Personnel Officer, South Central Railways, (CPO) on 17.8.1972 (Annexure-I).
4. The post of Store Clerks/ACMs in the grade of Rs.260-430, are said to be controlled by the Railway Headquarters. Two-thirds of the vacancies for this post, are filled in, by direct recruitment, through the Railway Service Commission and the remaining one-third, by promotion of Class IV staff, through selection, by written test and viva voce. Pending filling in of these vacancies by regular candidates, through the above mode of recruitment/promotion, these vacancies were filled in by granting promotions ad hoc. The applicant was promoted as Store Clerk/
- 24

ACM, on an ad hoc basis as above, and was therefore not treated as a regular candidate.

5. In 1981, Class IV Staff in the Catering Department were given an opportunity of promotion to Class III, in the post of ACM, in the pay-scale of Rs.260-430(RS), against the vacancies reserved for them. The applicant, who availed of this opportunity, appeared for the test held on 14.11.1981 and secured the necessary qualifying remarks. He also appeared for the viva voce on 19.2.1982. He did not however, appear in the panel published by the CPO on 25.5.1982.

6. Subsequently, the posts of ACMS were regularly filled in, by the prescribed mode of direct recruitment/promotion and the promotions effected earlier, on an ad hoc basis, were consequently terminated. Shri R. Balasubramanian, who was officiating as Bearer in the pay scale of Rs.200-240(RS) in the Bezwada Division, and Shri S.V. Raman, as Server in the pay scale of Rs.196-232(RS), who were senior to the applicant, were empanelled and promoted to Class III and posted as ACMS, in the pay-scale of Rs.260-430(RS) in Hubli Division, by terminating the ad hoc arrangements.

7. On a review of the work-load in Hubli Division in August 1983, the Additional Chief Commercial Superintendent/General/Secunderabad, decided to keep two posts of ACMS in abeyance, on account of appreciable decline in passenger traffic from Bangalore via Hubli and Miraj, consequent on the introduction of a through train service, between Bangalore and Bombay VT. via Guntakal, which had a corresponding effect, in depreciating sales of departmental Catering Units at Hubli and Miraj. As a result, the applicant who was appointed on an ad hoc basis,

SR

had to revert to his substantive post of Server, on a pay of Rs.238 per mensem, in the pay scale of Rs.200-240, with effect from 12.9.1983, as directed by the third respondent.(Annexure-G).

8. Aggrieved thereon, the applicant filed a writ petition in the High Court of Karnataka, which is transferred to this Tribunal and is now before us for consideration.

9. We have heard the rival contentions at length and examined carefully the relevant material placed before us. The learned Counsel for the applicant contends, that the applicant has been working as ACM for the last more than 16 years and had successfully get through the tests in 1971, 1974 and 1982, prescribed for promotion to this post; that he was reverted from the post of Class III to Class IV, without ^{KA}an affording opportunity to him, to represent his case, which is violative of the principles of natural justice; that the results of the viva voce, held in 1971 and 1981, were not intimated to the applicant, thus keeping him in the dark; that Sri R.Balasubramanian and Sri S.V.Raman, who were to junior to him, were promoted as ACMS, superseding him; that the respondents reverted the applicant to his substantive post, on account of mala fides, by keeping the post of ACM at Miraj in abeyance, and the impugned order dated 12.9.1983(Annexure-G) is passed by the Divisional Personnel Officer, Hubli, and not by the ^{KA}Divisional ^{SC}Commercial Superintendent, Hubli, who is the controlling authority and therefore, this order is ex facie, illegal.

10. In repudiating each of these contentions, the learned Counsel for the respondents, submitted, that the applicant was promoted to the post of ACM, purely on an ad hoc basis, till such time, the posts of ACMS were filled in, regularly, by the

SR

prescribed mode of direct recruitment/promotion from among Class IV staff, within the ceiling earmarked for the purpose. Though the applicant was required to appear from time to time, since 1971, for the tests prescribed for promotion to the post of ACM, he could not be considered for promotion to this post, as a regular candidate, as he was not sufficiently senior. Counsel for the respondents affirms, that Sri R. Balasubramanian and Sri S.V. Raman were senior to the applicant and as such, they were considered for promotion to the post of ACM earlier, than the applicant, according to the mode prescribed for filling in this post.

11. As the applicant was promoted to the post of ACM on an ad hoc basis, in an officiating capacity, he did not acquire any legal right, to hold that post for any period whatsoever and accordingly, there was no "reduction in rank" within the meaning of Art. 311(2) of the Constitution of India, if he merely reverted to his substantive post, as is borne out by the rulings of the Supreme Court, in the following cases :

- 1) STATE OF MYSORE v. NARAYANAPPA (1966) S.C. (CA 1420/66).
- 2) PARSHOTTAM DHINGRA v. UNION OF INDIA 1958 S.C. 36.
- 3) STATE OF MYSORE v. GADGOLI 1977 S.C. 1617
- 4) STATE OF BOMBAY v. ABRAHAM 1962 S.C. 794

Since the reversion of the applicant to his substantive post did not constitute "reduction in rank", in terms of the Supreme Court rulings cited above, the contention of the applicant, that the impugned order dated 12.9.1983 (Annexure-G), was not passed by the Controlling authority, has little relevance.

12. Learned Counsel for the applicant, has not substantiated his contentions, by adducing concrete evidence, to prove that his client was senior to Sri R. Balasubramanian and Sri S.V. Raman.

NR