

IN THE CENTRAL ADMINISTRATIVE TRIBUNA: HYDERABAD BENCH:  
AT HYDERABAD

O. A. No.296 of 1987

Date of Order: 6.3.1990

1. T. Ramudu  
2. A. Satyanarayana

.. Applicants

Versus

1. Senior Personnel Officer,  
South Central Railway, Guntakal.
2. Divisional Railway Manager,  
South Central Railway, Guntakal.

Respondents

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Mr. Venkata Rao, Advocate for

For Applicants: Mr. M. Panduranga Rao, Advocate.

For Respondents: Mr. N. R. Devaraj, Standing Counsel  
for Railways.

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CORAM:

HON'BLE SHRI B.N. JAYASIMHA : VICE CHAIRMAN

HON'BLE SHRI D. SURYA RAO : MEMBER (JUDICIAL)

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(Judgement delivered by Shri B.N. Jayasimha, Vice-Chairman)

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1. The applicants herein are questioning the Order No. G/P.564/II/Catg/Vol.II B, dated 1-4-1987 passed by the 1st respondent reverting them from the post of Bill Issuers to the posts of Server.
2. The applicants state that they were appointed as Servers in the Guntakal Division and they have been working as such without any break. The 1st respondent issued proceedings dated 4-7-1985 asking the applicants to appear before a screening committee on 15-7-1985 for the purpose of promotion to the post of Bill Issuer. After the said screening, orders were issued by the 1st respondent in his memo dated 25-7-1985 promoting the applicants to the post of Bill Issuers in the scale of Rs.225-308. Their promotion was subject only to the condition that they are free from DAR/SPE/Vigilance cases. The applicants contend that

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this promotion, was a regular promotion and not a temporary promotion. Thereafter, on 1-4-1987, the impugned proceedings were issued calling upon the applicants to make their representation within 10 days as to why the posts held by them should not be filled up by the candidates belong to Scheduled Caste and Scheduled Tribes. In the said proceedings, it was also stated that the applicants were appointed purely on adhoc basis and have no claim to continue as Bill Issuers and that they were wrongly appointed against SC and ST points. The applicants contend that having promoted them as Bill Issuers on regular basis, it is not open to the respondents to revert them to the posts of Server. The applicants contend that the action of the respondents in reverting them is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution.

2. On behalf of the respondents a Counter has been filed admitting that volunteers have been called for to fill up the 4 vacancies of Bill Issuers and that 12 employees (10 servers/Bear and 2 Asst. Cooks) have volunteered for the post of Bill Issuers. It is stated that 4 posts of Bill Issuers are to be filled by 2 OCs, 1 SC and 1 ST employees. But, from among the volunteers there were no SC/ST candidates. All the volunteers were called for the viva-voce on 15.7.1985, and the two applicants are amongst those selected. By mistake, it was not mentioned in the order dated 5.9.1985 that the applicants 1 and 2 who do not belong to SC/ST communities were promoted against SC/ST points and their promotion is 'purely on adhoc measure'. Subsequently by a letter dated 15.1.1986, the applicants were informed that their promotions are against SC/ST points and are purely on ad hoc basis. The applicants cannot take advantage of a clerical administrative mistake and claim any right opposed to rules. On representations made that SC/ST candidates were not aware of the notification, the issue was taken and a fresh notification was issued on 19-3-1986. Only two candidates have applied (One SC and One ST) and screening was conducted on 8-7-1986. In the meanwhile the other recognised organisation has represented to continue the O C candidates and the matter had been referred to CPO/SC vide order dated 24-11-1986 for a clarification. The

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CPO/SC has clarified the matter on 27-1-1987 stating that when SC/ST candidates are available in the field of eligibility, but, did not volunteer on the first occasion, volunteers should be called for from SC/ST candidates who were promoted on adhoc basis to their substantive grades. Accordingly, the two SC/ST candidates were screened and promoted reverting the applicants to their substantive grades vide order dated 24-4-1987. For these reasons, the respondents oppose this application.

3. We have heard the learned counsel for the applicant and Shri N.R.Devaraj, Standing Counsel for the Railways.

4. Shri Venkat Rao, on behalf of the learned Counsel for the applicants submits that the post of Bill Issuers are ex-cadre posts and the policy of reservation does not apply to the ex-cadre posts. The 40 point Roster and the reservation policy are applicable only to establishment cadres. Applying the reservation policy and reverting the posts is therefore against the rules. He relies on the decision of the divisional bench of the Patna High Court in N. Amanullah Vs. The State of Bihar and others (1985(1)SLR Page 225). It was held that posts not included in the cadre post cannot be treated as cadre post for promotional prospects. The bench relied on the observations of the Supreme Court in General Manager, Southern Railway and another Vs. Rangachari (AIR 1962 SC 36) and C.A.Rajendran Vs. Union of India and others (AIR 1968 SC 507). In Rangachari's case the Hon'ble Supreme Court observed -

"In other words, the opinion formed by the State that the representation available to the backward class of citizens in any of the services is, inadequate is a condition precedent for the exercise of the power conferred by Art. 16(4), and so the power to make reservation as contemplated by Art.16(4) can be exercised only to make the inadequate representation in the service adequate. If that be so, both 'appointments' and 'posts' to which the operative part of Art. 16(4) refers and in respect of which the power to make reservation has been conferred on the State must necessarily be appointments and posts in the service. It would be illogical and unreasonable to assume that for making

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the representation adequate in the services under the State a power should be given to the State to reserve posts outside the cadre of services. If the word 'posts' means ex-cadre posts reservation of such posts cannot possibly cure the imbalance which according to the State is disclosed in the representation in services under it. Therefore, in our opinion, the key clause of Art: 16(4) which prescribes a condition precedent for invoking the power conferred by it itself unambiguously indicates that word 'posts' cannot mean ex-cadre posts in the context".

5. Further it is also made clear in the Railway Board's letter No. E(SCT) 71CM15/18 dt. 4th Feb. 1971 (Page No. 194 of Brochure on Reservation for SCs and STs in Railway Services Third edition -1985) that a reservation can be made for SCs/ STs where the element of direct recruitment does not exceed 50%. In this case there is no direct recruitment at all and all the posts are filled in by the persons drawn from the other cadres.

6. In the result the applicant succeeds and we accordingly allow the application. The impugned orders are set aside and the applicants will be entitled to hold the posts of Bill Issuers and are also entitled to consequential benefits. No Costs.

(Dictated in the open court)

*B.N. Jayasimha*  
(B.N. JAYASIMHA)

VICE CHAIRMAN

*D. Surya Rao*  
(D. SURYA RAO)  
MEMBER (JUDICIAL)

Date: 6th March, 1990

*A. Reilly* 173/20  
For DEPUTY REGISTRAR(J)