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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

REVIEW APPLICATION NO.68/88

in  
ORIGINAL APPLICATION NO.392/87

Date of Order: 30-8-89

Between:

Syed Subhan.

and

1. General Manager (Union of India)  
South Eastern Railway,  
Garden Reach, Calcutta.  
and 2 others.

...Applicant.  
(Applicant in OA.392/87 on the  
file of the Tribunal).

...Respondents.  
(Respondent in -do- )

FOR THE APPLICANT: MR.E.S.RAMACHANDRA MURTHY: ADVOCATE

FOR THE RESPONDENTS: MR.P.VENKATARAMA REDDY: S.C. FOR RLYS.

CORAM:

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

AND

HON'BLE MR.D.SURYA RAO: MEMBER(JUDL)

( ORDER OF THE TRIBUNAL PREPARED BY HON'BLE MR.D.SURYA RAO:M(J) )

...Contd...

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REVIEW APPLICATION NO.68/1988

(ORDER OF THE TRIBUNAL PREPARED BY HON'BLE SRI D.SURYA RAO,  
MEMBER(J)).

Appearance: ---

For the Applicant : Mr.E.S.Ramachandra Murthy, Advocate  
For the Respondents : Mr.P.V.Reddy, SC for Rlys.

The applicant in this Review Application is the  
by the Railways  
respondent in O.A.No.392/1987 preferred against the  
judgment and decree of the VI Addl.District Munsif,  
Visakhapatnam decreeing on 24-9-1985 the suit  
O.S. 696/85 preferred by the <sup>Plaintiff - respondent herein,</sup> ~~applicant-plaintiff, respondent.~~

The main issue in the suit was whether the plaintiff  
is senior to two individuals M/s Gopal Rao and  
Rama Rao in the category of Office Superintendent  
Gr-II which was a promotion post from the category  
of Head Clerk. The case of the Department was  
that the post of Office Superintendent was a selection  
post in 1983 from the category of Head Clerk, that  
the applicant and others including M/s Gopal Rao  
and Rama Rao sat for a written test, that the  
applicant failed to qualify in the written test  
whereas the other two qualified and became eligible  
for appearing for a viva voce for promotion. Before  
the results could be announced, the applicant filed an  
earlier ~~a~~ suit and obtained a temporary injunction.  
Later, on the suit being dismissed, the panel was  
released and M/s Gopal Rao and Rama Rao were appointed

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earlier than the applicant as Office Superintendents Group-II. The applicant was later promoted as Office Superintendent, Group-II but without a test as due to restructuring orders of the Railway Board the criterion for filling up the post was seniority and suitability by scrutiny of the service records. The applicant in this Review Petition, thereupon <sup>a second suit</sup> filed O.S. 696/85. The suit was decreed holding that the applicant was the senior most Office Superintendent Gr.II, <sup>and</sup> that he is entitled to promotion to the post of Office Superintendent Gr.I by taking the examination therefor. An injunction was also granted restraining the Railways from holding written and viva tests for the posts of Office Superintendent Gr.I. It was this decree that was assailed in O.A. 392/1988. By an order dated 10-6-88, we had allowed the O.A. holding that Sri Gopal Rao and Sri RamaRao were entitled to seniority over the applicant in the category of Office Superintendent Gr.II, since they had passed the written test held on 21-7-83 followed by a viva-voce held on 12-8-83 whereas the applicant had failed in the written test and not qualified for the viva-voce. We further held that the applicant is not entitled to seniority over them .

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by virtue of Railway Board's restructuring orders dated 16-11-84. The applicant in this Review Petition preferred a Leave Petition to the Supreme Court, SLP 11126/1988 against the order of the Tribunal in O.A. 392/87. The Supreme Court directed that the applicant may move the Tribunal by way of review if so advised. Hence the present Review Application.

2. In this Review application, the applicant has raised various grounds assailing the orders passed in O.A. 392/1987. All the grounds except one, are beyond the scope of ~~the~~ a review application, in that he seeks to question the correctness of the findings of the Tribunal or seeks a re-hearing of questions already determined. Accordingly, during arguments, the learned counsel limited himself to one ground viz. the first ground which reads as follows:-

"The Hon'ble Tribunal should have noted that under chapter III of Railway Establishment Manual dealing with sections suitability tests and promotions, the post relating to scale of Rs.550-750 O.S. Grade II Superintendent post in mechanical department posts (open line) is a non-selection post and in the view of the matter the promotion to the said post is by virtue of seniority in that post and not by selection. Therefore, it should have been held that the petitioner was working in the post of O.S. Grade II Superintendent from 1-1-83 and senior most in the said post is deemed to have been regularised from 1-1-1983, which is also evident from the seniority list dated 25-3-88 in BPO No.WPV/103/42."

*[Handwritten signature]*

*[Handwritten flourish]*

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3. The learned counsel for the applicant contends that the entire basis of the Railway's case in O.A. 392/87 proceeded on the footing that appointment to the post of Office Superintendent Gr.II in the scale of Rs.550-750 was on the basis of selection whereas the rules provide that the post of Office Superintendent Gr.II in Mechanical Department posts (open line) is a non-selection post. He contends that in accepting the contention of the Railways the Tribunal had committed an error apparent on the face of the record and hence the need for review. We had accordingly called upon the learned counsel for the Railways Sri Venkatrama Reddy to produce the relevant orders whereby this post is treated as a selection post. The learned Standing Counsel for the Railways draws our attention to the para 210 of the Railway Establishment Manual. Para 210 of The Railway Establishment Manual was introduced by Railway Board's letter ESU PM1/13/3 dated 2nd March 1965 and No.E(NG)SG /PMI-13 dated 29-7-87 and E(NG) Manual 62/II-B. Para 210 of the Manual, read with Appendix-6 declares what are the selection and non-selection posts. In appendix-6, <sup>the post of</sup> Office Superintendent Gr.II <sup>has been</sup> ~~is~~ shown under the heading Clerical Staff in all Departments (other than Accounts). This post <sup>previously</sup> carried a scale of pay

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of Rs.350-475 and was classified as 'non-selection'.

This was, however, modified by Railway Board's

letter No.E(NG)/I-74PM-16 dated 6-5-1975 which

reads as follows:-

"Revision of classification of non-gazetted posts consequent on introduction of Revised Scales General Administration - Supervisory posts:

Reference Board's letter of even number dated 6-8-74 on the above subject. The Board have decided that the classification of supervisory posts of general administration departments in Revised Scales should be indicated in the Statement attached.

Enclosure of Board's letter No.E(NG)I-74PM I-6 dated 6-5-1975:

Designation of post	Authorised scale in Rs.	Classification before revision of scales	Revised scale in Rs.	Revised classifica- tion
1	2	3	4	5
1.(a) Head Clerk	210-380	Non-selection	X ( 425-700	Non-selection
(b) Chief Clerk	335-425	Selection	X X (1/3rd of the X posts of Chief X Clerk in autho- X rised sclae)	
2.(a) Chief Clerk	335-425	Selection	X 550-750	Selection
(b) Office Supdt. Gr.II.	350-475	Non-selection	X X (2/3rd of the X posts of Chief X clerks in X Authorised X Scale).	
(c) Chief Clerk Gr.I.	350-475	Non-selection	X	
3. Office Supdt. Gr.I.	450-575	Selection	700-900	Non-selection

A reading of the above circular instructions clearly shows that the post of Office Superintendent Gr.II which was a non-selection post in old scale of





TO

1. General Manager, (Union of India)  
South Eastern Railway,  
Garden Reach, Calcutta.
2. The Chief Mechanical Engineer,  
South Eastern Railway,  
Garden Reach, Calcutta.
3. The Divisional Railway Manager,  
Waltair, Visakhapatnam.
4. one copy to Mr. E.S. Ramachandra Murthy, Advocate.  
Block No. 7, Flat No. 53,  
Municipal Colony, Malakpet, Hyderabad.
5. one copy to Mr. P. Venkatarama Reddy,  
Secy for Railways, C&T, Hyderabad.
6. one spare copy

9/5/85  
26/10

DR  
Dile.  
Recd on 31/8/85  
At 5:15

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Rs.350-475 was revised to the scale of Rs.550-750 and re-classified as a Selection Post. The contention in the Review Application that the post was a non-selection post in the year 1983 is, therefore, incorrect. The Review Application is accordingly dismissed as without merit. No order as to costs.

*B.N. Jayasimha*  
(B.N. JAYASIMHA)  
VICE-CHAIRMAN

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

Dated: 30<sup>th</sup> August, 1989.

MHB/

*26/10/89*  
*Deputy Assistant*

*80/12*