

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

D.A. NO. 345/87

~~T.A. NO.~~

DATE OF DECISION 8/2/90

Petitioner

Advocate for the
Petitioner (s)

Versus

Respondent

Advocate for the
Respondent (s)

CCRAM

The Hon' ble Mr. B.N. Jayaram Reddy

The Hon' ble Mr. D. Surya Rao (S)

1. Whether Reporters of local papers may be
allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. whether their Lordships wish to see the
fair copy of the Judgment?

4. whether it needs to be circulated to
other Benches of the Tribunal ?

5. Remarks of Vice-Chairman on columns
1,2,4, (To be submitted to Hon'ble
Vice-Chairman where he is not on the
Bench)

for
(B.N.R.)

for
(D.R.)

(96)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

O.A.NO. 345 of 1989 ✓

Date of Order: 08/02/1990 ✓

1. L.Srinivasan ✓
2. B.Francis ✓
3. Khaja Moinuddin
4. S.Mallaiah
5. B.Vasudev
6. Y.Narayana Rao
7. M.Cheralu
8. R.Iylaiah
9. N.Venkateswarlu
10. L.Srihari
11. B.Prakasa Rao
12. Varghese
13. Devadas

..Applicants ✓

Versus

1. The General Manager,
South Central Railway, Railnilayam,
Secunderabad.
2. The Divl.Railway Manager,
SCR, (BG), Sec'bad.
3. The Chief Engineer (Const.)
SCR, Sec'bad.
4. The Chief Personnel Officer,
SCR, Rail Nilayam, Sec'bad.

..Respondents ✓

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For Applicants: Mr.P.Krishna Reddy, Advocate ✓

For Respondents: Mr.N.R.Devaraj, Addl.SC for Railways. ✓

C O R A M:

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

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

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

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1. The applicants herein are Class IV employees in the Open Line Engineering Department recruited originally at Secunderabad BG Division, South Central Railway. They were later promoted on an adhoc basis in Class III as Clerical staff. On 14-4-1988, the impugned order no.P(E) 535/CON/ Clerks, was issued. The order stated that during the years 1972 and 1977, some of the Class IV staff belonging to

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Gangmen/Khalasis/Lascars/Watchmen, etc, were inducted into the Civil Engineering Construction Organisation and were promoted to the post of Office Clerks on adhoc basis. Representations were received for regularisation of these adhoc Clerks/Typists working both in Open Line and Construction Organisation as has been done in similar cases on Southern Railway. The Railway Board directed that the matter should be discussed by CPO with both the Unions of South Central Railway and a mutually acceptable solution should be arrived at, at the zonal level. After convening such a meeting, the CPO issued instructions in letter No.P(E) 535/Con/Clerks, dated 14-9-1988, wherein at para (3) it was ordered as follows:

i) a selection should be held to give an opportunity to those willing employees who are seniors to those adhoc clerks working in Construction Organisation in their parent cadre and who had been ignored for initial adhoc promotions without even calling for an option. As a special case and as one time exception, the existing adhoc clerks on Construction side only, who have completed 6 years of service or more as on 1-1-1986 would not be subjected to this selection.✓

ii) A combined seniority-list will be prepared and a final pannel announced---

a) on the basis of the employees who passed the selection; and

b) the adhoc clerks who have completed 6 years of service or more as on 1-1-1986.✓

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iii) The adhoc Clerks on Construction side, who have rendered 6 years of service or more as on 1-1-1986 as per para 3(i) above will be considered regular for all purposes except for the purpose of seniority and promotion.

Seniority will be as per their turn in the final combined panel and also promoted only when their turn comes in the combined seniority list.

This order further states that in the case of adhoc clerks working in the open line , they will have to necessarily appear for selection. This selection was specifically prescribed not only to those who were seniors to the adhoc employees who had completed six years as clerks in the Construction side, but, also to the adhoc clerks working in the open line. The applicants are adhoc clerks working in the open line. It is their grievance/~~complain~~ that they have also completed 6 years as adhoc employees and that a preferential treatment given to adhoc clerks working on the construction side viz., regularisation without a test is discriminatory and violative of their rights under Articles 14 and 16 of the Constitution. They therefore seek a direction that the order of the 1st respondent dated 14-4-1984 referred to above directing the adhoc clerks working in the open line to appear for the selection test for the purpose of regularisation be set-aside and to regularise their services as clerks without any selection.

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2. On behalf of the respondents a counter has been filed stating that the decision to regularise adhoc clerks working in the Construction Organisation without a test and to conduct a test ~~work~~ for the adhoc clerks working in the Open line for selection is not violative of Articles 14 and 16 of the Constitution. It is stated that in view of the hectic constructional activity, extra manpower on the clerical side was urgently required in the exigencies of service in the Construction Organisation. Hence, some of the willing employees were taken in the Construction Organisation on purely adhoc basis as Office Clerks. These staff continued in the Construction Wing of the Civil Engineering Department in the year 1980. Consequent on representations made in this behalf and on the directions of the Railway Board and after discussions with the Unions, the Chief Personnel Officer took the decision contained in the impugned order dated 14-4-1988 in order ^{and} to protect ~~the~~/balance the interests of the adhoc clerks working in the construction and Open Line Organisations. It is stated that Office clerks were appointed in the construction organisation without calling for option or without regard to their seniority and they cannot be compared with adhoc clerks in Open Line who were picked and chosen as there were enough number of regular employees available in the Open Line and the vacancies of Office Clerks could have been filled in as per the normal channel of promotion confining the same to the Office Group 'D' Staff/Direct Recruits, in

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open line. It is clarified that the Office Clerks were appointed in Open Line on pick and choose basis without calling for volunteers. The procedure of calling for volunteers in the Construction Organisation was adopted in exigencies of service and due to the ^aderth of staff. In these circumstances, the ~~ad hoc~~ clerks who were working on adhoc basis in Construction Organisation for specified number of years, were directed to be regularised.

3. We have heard Sri Krishna Reddy, learned counsel for the applicants and Shri N.R.Devaraj, Addl. Standing Counsel for Railways.

4. The main attack on the impugned order is that while no examination/test is conducted for adhoc clerks who have completed six years as on 1-1-86 on the construction line, the adhoc clerks, who have completed six years of service as on 1-1-1987 on the Open Line are subjected to a selection before their regular absorption. This discrimination is sought to be justified by Shri Devaraj, who states that promotions were made from among Gangmen, etc., in both the Open Line and Construction line of adhoc clerks (Class III). The former are treated as promoted on pick and choose basis and hence a selection/test was directed to be held. In the case of later, they are treated as volunteers and hence were sought to be regularised without holding a test. This is vehemently contested by Shri Krishna Reddy, who says that on a perusal of the impugned order itself, it is evident

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that adhoc promotions in the Construction Organisation also was made without calling for options. He also mentioned that from the Open Line, employees were taken from the Construction Line, while some juniors were promoted there, the seniors got promotion later in the Open Line. Though all are from the same cadre, merely on the ground that some worked on the Construction Line and some on the Open Line, the distinction is sought to be made. No material has been shown to us to support that an opportunity was given to all the employees in the Open Line to volunteer for service in the Construction Organisation. On the other hand para 3(i) of the CPO's letter dated 14-4-1988 which has been extracted in para 1 supra specifically states that a Selection is proposed to be held to give an opportunity to the Clerks in the parent cadre, "who had been ignored for initial adhoc promotion without even calling for an option". If a General Circular had been issued and if some of the employees in the parent cadre refused and some of the employees volunteered to work in the Construction Organisation, then, the treatment given to the adhoc clerks in the Construction Organisation could be justified. In the absence of this, we are unable to find any justifiable reason for treating the adhoc clerks in the Open Line differently. The applicants who are in Open Line and the adhoc clerks who are in the Construction Organisation would, therefore, have to be treated equally.

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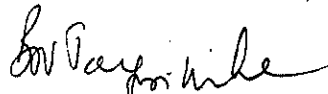
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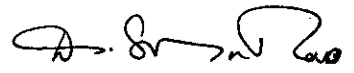
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5. In the result, the application is allowed and the respondents are directed to regularise the services of the applicants as Clerks without holding any selection as in the case of adhoc clerks working in the Construction Organisation. No costs.

(Dictated in open court).


(B.N.JAYASIMHA)
VICE CHAIRMAN


(D.SURYA RAO)
MEMBER (JUDD.)

DT.8th February, 1990.


DEPUTY REGISTRAR (J)
19.2.90

SQH*

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TO:

1. The General Manager, south central railway, Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager, south central railway (Broad Gage) Secunderabad.
3. The Chief Engineer (construction) south central railway, Secunderabad.
4. The Chief personnel officer, S.C. Railway, Rail Nilayam, Secunderabad.
5. One copy to Mr. P. Krishna Reddy, Advocate, 3-5-899, Himayatnagar, Hyderabad.
6. One copy to Mr. N.R. Devaraj, SC for railways, CAT, Hyd.
7. One spare copy.

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7th Feb 1990
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