

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

CONTEMPT PETITION No.35 of 1989 IN
TRANSFERRED/ORIGINAL APPLICATION NO.634 of 1989.

DATE OF ORDER: 21.3.90

BETWEEN:

N. Subba Rao
& 3 others

...

APPLICANT(S).

A N D

The Divisional Railway Manager,
South Central Railway,
Vijaywada
& 7 others

...

RESPONDENT(S).

FOR APPLICANT(S): Shri P. Krishna Reddy, Advocate.

FOR RESPONDENT(S): Shri N.R. Devaraj, SC for Railways.

CORAM:

Hon'ble Shri J. Narasimha Murthy : Member (Judl).

Hon'ble Shri R. Balasubramanian : Member (Admn).

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 ^{es} needs to be circulated to other Bench^{es} 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)

N°

HJNM
M(J)

HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

C.P.No.35 of 1989 AND
O.A.No.634 of 1989.

Date of Judgment 21.3.90

N. Subba Rao
& 3 others

-- Applicants

Versus

The Divisional
Railway Manager,
South Central Railway,
Vijaywada
& 7 others

-- Respondents

Counsel for the Applicants : Shri P. Krishna Reddy,
Advocate.

Counsel for the Respondents : Shri N.R. Devaraj,
SC for Railways.

CORAM:

Hon'ble Shri J. Narasimha Murthy : Member (Judl).

Hon'ble Shri R. Balasubramanian : Member (Admn).

[Judgment as per Hon'ble Shri R. Balasubramanian,
Member (Admn)]

This is an application filed under section 19
of the Administrative Tribunals Act by Shri N. Subba Rao
and 3 others against the Divisional Railway Manager,
South Central Railway, Vijaywada and 7 others. 3 of the
respondents are private.

2. The applicants joined the Railways as casual labour
and had subsequently been absorbed as regular Group-D
staff. From 1981-83 onwards all the 4 have been working as
Junior Typists on an ad-hoc basis. On 19.8.88 the
Divisional Railway Manager, South Central Railway, Vijaywada
issued a notice proposing to conduct a selection for

filling up of 8 posts (5 O.C., 2 S.T. and 1 S.C.) of Typists against the $33\frac{1}{3}\%$ departmental quota by promoting Group-D staff of all the departments except RPF staff. A written test was conducted on 15.7.89. The results are yet to be published. The applicants are aggrieved that vide proceedings No.B/P.563/IX dated 17.8.89 Office Order No.PG/50/89 the applicants were reverted to their original posts and repatriated to their parent departments. The cause for this was a crash recruitment programme for filling up the SC/ST vacancies and also repatriation of regular Typists from other units where they were rendered surplus. The applicants contend that there were 8 posts vacant against the one-third quota meant for promotees and that repatriates from other units and SC/ST candidate should not be posted against the promotion quota but should be adjusted against the direct recruitment quota. They have prayed that the letter dated 17.8.89 reverting them be set aside.

3. While admitting the Original Application an interim order was passed on 21.8.89 as follows:-

"Admit. By way of interim orders, we direct that the applicants shall not be reverted subject to the availability of vacancies in the promotion quota of $33\frac{1}{3}\%$ of departmental candidates."

4. The respondents have opposed the prayer. It is their case that 8 posts were not ACTUALLY available on the date of issue of the notification (emphasis supplied by us). Their contention is that every now and then they assess the number of vacancies

depending upon the situation prevailing at that time and compute promotion and outside quota. Accordingly at one such review they computed a total of 25 vacancies and one-third of it ^{ie 8} fell to the quota of ~~8~~ ^{promotees}. It is their point that these 8 were not available at that time and that these included the vacancies that would arise in future. They conducted an examination according to the notice of 1988 and the panel is kept alive for a period of 2 years and it is their calculation that during this period of 2 years 8 vacancies will actually arise and that they would promote 8 Class IV staff. The purpose of the examination was thus to keep a panel which they hoped to exhaust in 2 years time. As and when vacancies arise, they do not brand the vacancies as direct recruitment or promotion quota. The vacancies are filled up depending upon the exigencies. When a few vacancies actually arose they had filled them up with SC/ST candidates in pursuance of a crash recruitment programme as a policy matter and had also utilised a few vacancies for accommodating repatriates from other division where staff had become surplus. The private respondents were either SC/ST candidates or repatriates. In addition they had appointed one more S.T. candidate Kum.A.Sulochana based on an offer of appointment made in July, 1989 much before the filing of the Original Application.

4. The question before us is whether these vacancies actually existed on the date of notification in August, 1988 or not. From the Railway records we find that an

assessment of vacancies was made on 27.4.88 for the period 4.7.85 to 31.3.88 because this was the next assessment made after 4.7.85. The position at that time was as below

| | |
|--|-----------|
| Existing vacancies. | 2 |
| Staff working on ad-hoc basis. | 5 |
| No. of appointments made between 4.7.85 and 31.3.88. | 17 |
| Anticipated due to retirement. | 1 |
| Total. | <u>25</u> |

This assessment was done to determine the number of vacancies that should go to the promotee quota. The intention was to compute the shortfall in the promotee quota. 33 $\frac{1}{3}$ % of this was 8 which was further split up into 5 O.C., 2 S.T. and 1 S.C. vacancies. It is a fact that the applicants had been working on an ad-hoc basis for a long time but this does not confer on them any right to continue on a regular basis till such time as they are regularly selected and appointed as such. Therefore, when posts were required for accommodating SC/ST candidates on a crash recruitment programme or to accommodate repatriates from other divisions their reversion became inevitable. We therefore do not find anything irregular in the order of reversion of the respondents. In the course of the hearing the learned counsel for the applicants pointed out that at the time of reversion namely 17.8.89 all the 4 applicants were on leave and that in view of the interim order passed they should not have been reverted. We have already pointed out that the vacancies in the one-third quota were not actually

available at the time of passing of the reversion orders and therefore the question of continuing them was neither required nor feasible.

5. The respondents have also averred that the applicants had been clamouring for promotion from Group-D to Typists. To create vacancies in the cadre of Typists they had suggested to the respondents that change of cadre from Typists to Office Clerks might be considered expeditiously and the respondent department has agreed to the suggestion and has assured them that if they get selected in the examination their cases for promotion would be expeditiously dealt with. It may be added here that the results of the examination conducted on 15.7.89 were published much later and the provisional panel for promotion from Group-D to Typists was released on 1.11.89. The respondents state that they had already promoted 3 persons out of this panel. They have assured that they would exhaust the panel for promotion as quickly as they can.

6. ^{Three of the four} ~~The~~ applicants have also filed a Contempt Petition No.35 of 1989. It is their allegation there that the interim order passed by the Tribunal had been flouted by the respondents stating that despite 8 vacancies being available in the one-third quota the applicants had been reverted contrary to the directions. In the disposal of the Original Application we have come to the conclusion that vacancies were not actually available in the

one-third quota on the date the reversion orders were issued. Moreover, the reversion orders were issued on 17.8.89 itself before the passing of the interim order of this Tribunal. There is, therefore, no contempt involved.

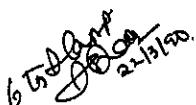
7. The Original Application No.634 of 1989 is dismissed and the Contempt Petition No.35 of 1989 is also disposed of. There is no order as to costs.



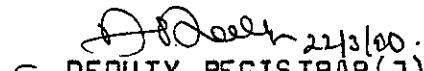
(J. NARASIMHA MURTHY)
Member (Jud1)



R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn)



Dated 21-3-90



D. Devaraj 21/3/90
DEPUTY REGISTRAR (J)

TO:

1. The Divisional Railway Manager, S.C.Railway, Vijayawada.
2. The Divisional personal officer (Co-ordination) S.C.Railway, Vijayawada.
3. The Divisional Personal officer, S.C.Railway, Vijayawada.
4. The Deputy Chief Mechanical Engineer, Wagon work shop, Guntupally.
5. The Divisional Electrical Engineer Electric Loco shed/ Traction Following stock, S.C.Railway, Chittoor, Vijayawada-9.
6. One copy to Mr.P.Krishna Reddy, & Advocate, 3-5-899, Himayatnagar, Hyderabad.
7. One copy to Mr.N.R.Devaraj, SC for Railways., CAT, Hyderabad.
8. One copy to Hon'ble Mr.R.Balasubramanian, Member:(A), C.A.T., Hyderabad.
9. One spare copy.

k.j.

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