

(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD  
BENCH AT : HYDERABAD

O.A. No.115/1990

Date of Order: 16.4.1990

Between:

B. Deva Das,  
Chief Law Assistant,  
South Central Railway,  
Secunderabad

.. Applicant

Versus

1. Member (Staff) UOI,  
Railway Board,  
New Delhi.

2. The General Manager,  
S.C. Railway, Secunderabad.

3. The Chief Personnel Officer,  
S.C. Railway, Secunderabad.

4. Sri P.P. VITTAL, Law Officer,  
S.C. Railway, Secunderabad.

5. The Chief Commercial Supdt.,  
S.C. Railways, Secunderabad.

... Respondents.

APPEARANCE:

FOR THE APPLICANT : Shri G.V. Subba Rao, Advocate &  
Shri V. Venkateswara Rao, Advocate.

FOR THE RESPONDENT : Shri N. R. Deva Raj,  
Standing Counsel for Railways.

...

CORAM:

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

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

.....

(JUDGEMENT DELIVERED BY HON'BLE SRI D. SURYA RAO, MEMBER (J))

.....

1. The applicant herein is working as a Chief Law Assistant in the grade Rs.2000-3200/- in the South Central Railway at Secunderabad. The claim of the applicant is briefly summarised hereunder.

2. In the South Central Railway there is a Law Cadre which is a cadre independent of the Commercial Cadre. It

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comprises 2 posts viz., Law Officer, which is a Senior Scale Group 'A' <sup>post</sup> and Asst. Law Officer, which is a junior scale/ Group 'B' <sup>post</sup>. When the existing Law Officer Shri D. Francis Paul retired on 30.6.89, a vacancy in the cadre of Law Officer arose. According to the rules the post of Law Officer has to be filled in by promotion failing which by transfer, failing which by direct recruitment. On 5.7.89 office order No.277/89 was issued which is to the following effect.

"The following order is issued with approval of the competent authority.

1. Consequent on the retirement of Sri D. Francis Paul, Law Officer on 30.6.89, due to superannuation, the senior scale post of law officer is temporarily downgraded to Gr. 'B' with immediate effect.

2. Sri P.P.Vittal, Offg. ACO(Rates) who belong to the T(T) and C department is temporarily transferred from the T(T) SC department to the General Admn. department and posted as Offg. Law Officer (Group 'B').

The post of Law Officer is controlled by Railway Board and the posting of Sri Vittal is only a stopgap arrangement until a regular incumbent is posted by the Railway Board. The posting of Sri Vittal is purely on adhoc arrangement and it will not confer on him any prescriptive right or title for continuation in the post or in any other vacancies that may arise in Senior Scale/Gr. 'B' in the Law Cadre.

The date on which the officer takes over charge may please be intimated to this office alongwith his charge report in triplicate.

Sd/-

K. Thiagarajan  
For Chief Personnel Officer"

Aggrieved by this order the applicant filed the present application. It is contended that the 4th respondent Sri P.P.Vittal, was appointed by the impugned order dt.5.7.89 as Officiating Law Officer, (Gr. 'B'), that he does not belong to Asst. Law Officer <sup>Cadre</sup> and that appointing him to the post of Asst. Law Officer (Gr. 'B') is violative of rules. A suggestion was made in the application that consequent on retirement of Sri Francis Paul, Sri Keshavulu should be posted in the downgraded post and thereafter the seniormost <sup>Chief Law Assistant Shri D</sup> be promoted to the post of Asst. Law Officer till such

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time a regular appointment is made. This contention has not been pressed in the course of arguments.

3. On behalf of the respondents a counter has been filed stating that there was no eligible candidate in the category of Asst. Law Officer/Estate Officer having 8 years service in Group 'B' available for promotion. There were also no officers available in the Commercial Department with the requisite qualifications who could be appointed by transfer since ~~some~~ officers who had the qualifications were not willing to come on transfer or the officers who were willing were found not suitable. The Railway Board was therefore addressed to continue the existing incumbent Sri Francis Paul. As there was no reply from the Board and since the post could not be kept vacant, in exigencies of services it was downgraded temporarily to a Group 'B' post. Thereafter the seniormost Asst. Commercial Officer the fourth respondent was appointed as Stopgap arrangement. It is averred in the counter that he was eligible for appointment in accordance with the rules of recruitment of Law Officers/Asst. Law Officers. In so far as the applicant is concerned, it is contended that the applicant cannot seek promotion to the post of Law Officer/Asst. Law Officer since he belongs to the Commercial cadre and has to seek promotion only in that cadre, and that he has no locus standi to file the application or claim promotion on adhoc basis. It is further stated that the Railway Board has also been approached with a request to make regular appointment. Therefore, it is contended that the applicant has not made any case and there is no merit in the case.

4. We have heard the arguments of learned counsel for the applicant Shri V. Venkateswara Rao, who appeared on behalf of Sri G.V. Subba Rao, advocate for the applicant and Shri N. R. Deva Raj, Standing Counsel for the Railways.

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A perusal of rules relating to appointments to the post of Law Officer discloses that appointments could be made by promotion to the extent of 66 2/3% failing which by transfer on deputation to the extent of 33 1/3% failing both by direct recruitment. In so far as the Asst. Law Officer is concerned appointment shall be made by promotion failing which by transfer/deputation failing which by direct recruitment. In so far as the promotion is concerned the selection may be from permanent staff working in higher scale Gr. 'C' as Law Superintendent (Chief Law Assistant)/ Senior Law Assistant/ Law Assistant). For the purpose of transfer/ deputation the appointment shall be made from officers holding analogous post in Central/State Governments possessing a degree in law and adequate experience. Consequent on downgradation of post of law officer to that of Law Officer Gr. 'B', it is clear that the rule governing mode or method of appointment of Asst. Law Officer would apply to the downgraded post. The rule is clear namely that in making appointments to the post of Asst. Law Officer the first method should be by promotion from the category of Chief Law Assistant/Senior Law Assistant/Law Assistant. If no suitable candidate is available then the next method viz., appointment by promotion/deputation should be resorted to. Even then if no suitable candidate is available then direct recruitment should be resorted to. Sri Venkateswara Rao contends that without resorting to the first method the second method was resorted to. Sri Deva Raj, Standing Counsel for the Railways on the other hand contends that the appointment of respondent 4 was made as a purely stop gap temporary arrangement till the Railway Board makes a regular appointment in the grade of Law Officer (Group 'A'). He has also drawn our attention to the letter addressed by local Railway Administration (annexure to the contents) to the Railway Board which is the competent authority for making regular arrangements for filling up of the posts of Law Officer, Gr. 'A' and that no

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reply has been received from the Railway Board. It is also mentioned therein that there was no eligible employee in the cadre of Asst. Law Officer, Gr. 'B' who has the requisite qualification for promotion to the post of Law Officer Gr. 'A'. It was also brought to the notice of the Railway Board that all efforts to make appointment by transfer/deputation from Commercial Department did not yield any result. The Board was informed that the post of Law Officer has accordingly been downgraded and an officer from the Commercial Department has been posted against the downgraded post. While making it clear that it is not possible to continue this arrangement for an indefinite period, the Board was also requested to make an adhoc arrangement (for the post of Law Officer - Group 'A') pending finalisation of regular posting if it desires. It is thus clear that the appointment to the downgraded post of Law Officer, Gr. 'B' was not sought to be made in accordance with the rules but only as a pure stop gap arrangement pending further action by the Board. It is contended by Sri Venkateswara Rao for the applicant that whatever be the tenure for which the appointment is made viz., whether regular, temporary, ad-hoc or stop gap the appointment must be made in the accordance with the order prescribed in the rules viz., first by promotion, failing which by transfer/deputation failing which by direct recruitment. We are unable to agree with this contention. When an appointment is sought to be made as a pure stop gap or temporary arrangement as in the instant case pending action by the Railway Board there would not be any need to go through the elaborate selection procedure for promotion or other modes of appointment prescribed under the rules. No doubt if adhoc promotion has been made and in the process a junior to the applicant is preferred then he would have a grievance of cause of action. However, admittedly no junior to the applicant has been brought above him. The applicant therefore cannot have any grievance on this score.

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To:

1. The Member(Staff) UOI, Railway Board, New Delhi.
2. The General Manager, S.C.Railway, Secunderabad.
3. The Chief Personnel officer, S.C.Railway, Sec'bad.
- ~~4. The Chief Commercial superintendent, S.C.Railways, Sec'bad.~~
5. One copy to Mr.G.V.Subba Rao, Advocate, 1-1-230/33, Jyothi Bhavan, Chikkadpally, Hyderabad-500 020.
6. One copy to Mr.M.R.Devaraj, SC for Railways., CAT, Hyderabad for RR 1,2, 3 & 5.
7. One copy to Mr.D.Francis Paul, Advocate, for R-4, Railway Bungalow No.90/1, south lalaguda, Sec'bad-500 017.
8. One spare copy.

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kj.

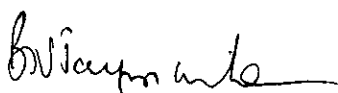
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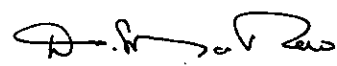
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5. Sri V. Venkateswara Rao, has sought to rely upon certain decisions wherein (i) 1973(1)SLR 209, (ii) 1970SLR 103, (iii) 1977(1)SLR 531, (iv) 1979(2)SLR 219 and (v) 1984 SLR Page 89. The facts in these above cases are not identical to the present case. In these cases no legal proposition has been laid down that when making ad-hoc appointments as a purely stop gap arrangement, the procedure as prescribed in the rules for making regular appointments should inevitably be followed. These decisions do not lay down that stop gap and temporary arrangements cannot be made in administrative exigencies by the Department. In our view the above cited cases do not apply to the facts of the present case. We accordingly held that the impugned order is not liable to be set aside.

6. We however find that this stopgap or temporary arrangement has been continuing for more than 9 months ever since 5.7.1989. Obviously, this situation or position cannot be allowed to be continued indefinitely. It is necessary that the respondents must make a regular appointment to the post of Law Officer in accordance with the rules within a reasonable time. Further, if it is proposed to downgrade the post permanently even then the appointment must be made regularly in accordance with the rules prescribed for Asst. Law Officers. We would accordingly direct the respondents to terminate the stopgap or temporary arrangement within a reasonable time not exceeding 3 months and to make regular arrangements for filling up of the vacancy of Law Officer. With these observations the application ~~has been~~ <sup>is</sup> dismissed with <sup>no</sup> orders as to no costs.

  
(B.N. JAYASIMHA)  
HON'BLE VICE CHAIRMAN

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

Date: 16<sup>th</sup> April, 1990

  
Deputy Registrar(A)

CHECKED BY

TYPED BY:

COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBU-  
NAL:HYDERABAD BENCH:HYD.

HON'BLE MR.B.N.JAYASIMHA: V.C.

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

A N D

HON'BLE MR.J.NARASIMHA MURTHY(M)(J)

A N D

HON'BLE MR.R.BALASUBRAMANIAN:(M)(A)

DATED: ~~5-4-90~~ 16-4-90

ORDER/JUDGMENT:

M.A./R.A./C.A./No. in

I.A.No. W.P.No.

O.A.No. 115/90

~~Admitted and Interim directions~~  
~~issued.~~

~~Allowed.~~

~~Dismissed for default.~~

~~Dismissed.~~ ✓

~~Disposed of with direction.~~

~~M.A. ordered.~~

No order as to costs. ✓

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