

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::

O.A.No.177/90.

Date: 13.8.1993.

Between:

Ch. Anjaneyulu ..

.. Applicant

And

1. Chief Personnel Officer,
S.C.Railway, Rail Nilayam,
Secunderabad.
2. General Manager, S.C.Railway,
Rail Nilayam, Secunderabad.
3. Union of India, rep. by its
Secretary & Chairman,
Ministry of Railways, Rail Bhavan,
New Delhi.

.. Respondents

APPEARANCE:

For the applicant : Sri V.Rama Rao, Advocate

For the respondents : Sri N.R.Deva Raj, Sr.CGSC

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO, VICE-CHAIRMAN

THE HON'BLE MR.P.T. THIRUVENGADAM, MEMBER (ADMN.)

{ Judgment of the Bench as per Hon'ble Sri P.T.Thiruvengadam,
Member (Admn.) }

...

The applicant herein joined Railways as Junior Clerk in the year 1973. By the year 1985 he was functioning as Head Clerk and was dealing with the cadre of personnel branch staff in the office of Workshop Personnel Officer, Guntupally, S.C.Railway. Some time in September, 1985 the selection for filling up the posts of Chief Clerks in Personnel Branch was to be initiated, ^(The post of chief clerk) which is higher in

...2/-

54

: 2 :

hierarchy to the post of Head Clerk.) The applicant then put up a note indicating the number of posts to be filled in as five (5) duly indicating various heads such as existing, anticipated and resultant=vacancies. The Workshop Personnel Officer after seeing the said note minuted to restrict the number of vacancies to four (4) since the sanction is yet to be communicated for the 5th vacancy. The case of the applicant is that he showed the rule position as per Serial Circular No.19/83 dt. 10.2.1983 to the Workshop Personnel Officer. Then the applicant was instructed to put up a revised note duly enhancing the number of vacancies to five (5). The Workshop Personnel Officer accorded approval for the proposal and a total of 15 candidates were called for the selection which ^{was} held on 16.11.1985 and 25.2.1986 (written test) and 2.5.1986 (viva-voce). 5 candidates were empanelled on 13.5.1986 and the applicant was listed at Sl.No.5. The currency of the panel is for a period of two years and during the currency period the applicant was promoted as Chief Clerk on adhoc basis in different spells. However, on 13.4.1988 just prior to the completion of two years ^{7.5.86,} period from the date of approval of the panel by the competent authority, ~~on 7.5.1986~~ the applicant was reverted as Head Clerk.

2. Some time in January, 1989 the applicant was served with a charge sheet for imposition of penalty on the allegation that he had manoeuvred in inflating the assessment of vacancies from 4 to 5 without any reasonable justification and with ulterior motive of his getting benefitted for empanelment as Chief Clerk. An enquiry was held and

...3/-

22/10/89

55

the Enquiry Officer gave his report holding that the charge levelled against the applicant is not proved. The disciplinary authority did not impose any punishment. The appellate authority on his own motion called for the disciplinary case of the applicant and differed with the views of the Enquiry and Disciplinary Authority. The appellate authority imposed the penalty of reduction to lower time scale for a period of one year without loss of seniority. This punishment was appealed against and the Chief Personnel Officer cancelled the punishment. Thus the disciplinary proceedings came to a close with the order of the Chief Personnel Officer dt. 21.12.1992.

3. Separately a show-cause notice was issued to the applicant on 8.8.1989 advising him that it was proposed to delete his name from the panel of Chief Clerk as it had been decided to restrict the size of the panel to four (4) only. The applicant submitted his representation and the Chief Personnel Officer vide his letter issued in December, 1989 finally advised the applicant that his name stood deleted from the panel of Chief Clerk published on 13.5.1989. Aggrieved by this order this O.A. has been filed.

4. The learned counsel for the applicant raised the following grounds in support of his case.

- (i) The Enquiry Officer in the departmental enquiry had cleared the applicant with regard to assessment of vacancies. It was the case of the applicant that local Finance Officer at the Workshop level had agreed for the creation of one post of Chief Clerk in his letter dt. 26.3.1983 ^{and hence this was included as an anticipated man}. No doubt, in the said letter it was mentioned that the concurrence of the Workshop Finance Officer was subject to final concurrence of Financial Adviser & Chief Accounts Officer (FA&CAO) and the sanction of the competent authority. It was the case of the applicant that

✓

32/8
71

56

if the final concurrence by the FA&CAO and the sanction by the competent authority are to be reckoned, then the vacancy should be treated as existing vacancy and not as an anticipated vacancy. For the assessment, for the selection, the applicant had taken the concurrence dt. 26.3.1983 referred above, as an anticipated vacancy and had thus shown a total of five (5) vacancies for the panel.

- (ii) In the Serial Circular issued by S.C.Railway No.163/86 dt. 14.11.1986 the term 'existing vacancy' includes only those which are actually vacant or filled up on adhoc basis and those posts which are already sanctioned and are yet to be filled up. Posts which are likely to be sanctioned should not be taken into account. The case of the applicant is that the interpretation of the serial circular should be that the posts which are likely to be sanctioned should be taken under the group of anticipated vacancies.
- (iii) In [1989 (1) SLR 325] CAT, Madras had held that it would not be proper to remove persons from select list merely because a mistake had been committed by the departmental authority in calling such persons who are not eligible to be called for the selection. The CAT, Madras also observed that it would not be correct to make the candidate undergo a fresh process of selection.

5. The learned counsel for the respondents specially drew attention to the fact that the applicant was in a key position with regard to the assessment of vacancies and had some personal interests. The Railway Board letter dt. 25.1.1983 bearing No.E(NG)-I-80 PMI-21 was referred to by the learned counsel and para-2(f) is extracted hereunder:-

"Para-2: The concept of anticipated vacancies should be deemed to connote the following type of vacancies.

...5/-

attg
7/

57

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) Vacancies likely to arise due to creation of additional posts in higher grades and also in the same grade. This may include only those proposals which have been concurred in by Accounts and approved by the competent authority."

6. It is manifest from the above that for a vacancy to be included as an anticipated vacancy the proposal should have been concurred in by Accounts and approved by the competent authority. Concurrence process involves a number of levels. Any concurrence at the lower levels cannot be taken as final and only when the final competent authority gives his concurrence this may be deemed to be complete. In this case even the local Finance Officer in his letter dt. 26.3.1983 had mentioned that his concurrence is subject to final concurrence of FA&CAO. The FA&CAO in his letter dt. 8.11.1983 did not concur for the post of Chief Clerk and even among the remaining posts concurred by the Workshop Finance Officer, only about 50% of the posts were concurred with the proviso that the posts have to be sanctioned by the AGM(EC). Thus the concurrence by the Accounts at FA & CAO's level and approval by the AGM(EC) are obviously necessary for a post to be considered as an 'anticipated vacancy' as per Railway Board's instructions.

...6/-

5th 8
F.

(58)

7. It may also be noted that the non-concurrence by the FA & CAO for the post of Chief Clerk was known as early as in November, 1983, since a copy of the said letter was endorsed to Guntupally workshop. Thus, there is no case for inclusion of this vacancy ^{in 1983} as an anticipated vacancy. Reliance on the circular issued by the South Central Railway No.163/86 dt. 14.11.1986 also does not help the case of the applicant. The relevant para of the circular reads as under:-

"1.4. As per Railway Board's letter No.E(NG)I-80 PM1-21 dt. 25.1.1983 (Serial Circular No.19/83) the vacancies should be worked out, taking into account the existing vacancies, anticipated vacancies for the next one year, plus 20% of the anticipated vacancies only to arrive at the final figures. Care should be taken to work out the 20% ration on the anticipated vacancies only and not on the total of existing vacancies plus anticipated vacancies. In the existing vacancies, only those which are actually vacant or filled up on adhoc basis and those posts which have already been sanctioned and are yet to be filled up, should be taken. Posts which are likely to be sanctioned should not be taken into account. Further, the number of staff available from the previous panel for promotion and number officiating on leave/training vacancies should be deducted from the existing vacancies. Similarly, for the anticipated vacancies only those vacancies which are classified under para-2 of the Board's letter dt. 25.1.1983 quoted above should be taken."

^{hbc}
It is noted that for the concept of anticipated vacancies reference has been drawn to the relevant letter of Railway Board's letter dt. 25.1.1983 and hence there is no scope for different interpretation ^a other than the one discussed in para 6.

...7/-

6/10/83

59

8. With regard to the citation [1989 (1) SLR 324] we do not feel it necessary to go into the details since the applicant cannot have a case for getting a benefit out of a mistake committed by him in computing the vacancies.

9. In view of the above the O.A. is liable to be dismissed and accordingly it is dismissed. No costs.

P. T. Thiruvengadam

(P.T.Thiruvengadam)
Member(Admn.)

V. Neeladri Rao

(V.Neeladri Rao)
Vice Chairman

Dated 13th August, 1993. Dy. Registrar(Judl.)

grh.

Copy to:-

1. Chief Personnel Officer, S.C.Railway, Rail Nilayam, Secunderabad.
2. General Manager, S.C.Railway, Rail Nilayam, Secunderabad.
3. Secretary & Chairman, Ministry of Railways, Union of India Rail Bhavan, New Delhi.
4. One copy to Sri. V.RamaRao, advocate, CAT, Hyd.
5. One copy to Sri. N.R.Devaraj, SC for Rlys, CAT, Hyd.
6. One copy to Deputy Registrar(Judl.), CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. Copy to Reporters & All Benches as per standard list of CAT, Hyd.
9. One spare copy.

Rsm/-

7th Aug 1993
P.T. Thiruvengadam