

28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.384/90.

Date of Judgement : 28-10-92

K.R.Venkoba Rao

.. Applicant

Vs.

1. General Manager,
S.C.Rly., Secunderabad.
2. Chief Personnel Officer,
S.C.Rly., Secunderabad.
3. Chief Engineer (Optg.Line),
S.C.Rly., Secunderabad.
4. B.V.Ramana Murthy,
P.W.I., Gr.I, Headquarters,
S.C.Rly., Secunderabad. .. Respondents

Counsel for the Applicant :: Shri S.Laxma Reddy

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

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J u d g e m e n t

[As per Hon'ble Shri A.B.Gorthi : Member(A)]

S.C.Railway held a written examination in January/
February, 1990 for the purpose of preparing a panel of
selected candidates for promotion to the Group-B posts of
Asst. Engineers in the Engineering Department. The
Applicant challenges the validity of the selection
proceedings and prays that the same be set aside.

2. The Railway Board vide letter No.E(GP)85/1/78
dt. 20.2.87 decided that an employee to be eligible for

.....2

6

DRP

29

promotion to a Group-B post should possess:

- (a) Minimum of a Degree for promotion to non-technical Group-B posts, and
- (b) Minimum of a Diploma or equivalent in the Engineering discipline concerned for promotion to Group-B technical posts.

3. The above eligibility condition was to come into effect from 1.7.91. Sufficient time was thus allowed so that the employees who did not possess the required qualification would have the opportunity to acquire the Degree/Diploma and thus equip themselves for selection to be held after 1.7.91.

4. On 6.12.89, S.C.Railway decided to hold a selection test for the ~~preparation of~~ panel of Asst. Engineers. The number of vacancies assessed were 36 for the period of 1.11.89 to 31.10.91. Initially, about 120 candidates were alerted to be in readiness for taking the test. Thereafter another 50 candidates were similarly alerted. Finally, 118 candidates were called for the written test. At the last minute, Respondent No.4 was also called for the test although his name did not figure in the alert lists. The Applicant contends that the Respondents improperly included three vacancies arising between 1.7.91 and 31.10.91 also while assessing the total number of vacancies arising as 36. In view of the Railway Board's policy which became effective from 1.7.91 his contention is that the vacancies occurring on or after 1.7.91 could only be filled following the revised eligible conditions. Moreover, the authority improperly allowed Respondent No.4 to appear for the test even though his name was not there in the alert list and he was not eligible to be included in the panel.

.....3

22/10/91
7

5. The Respondents admit that the number of vacancies was assessed for the period from 1.11.89 to 31.10.91. It was because, as per extant instructions, such expected vacancies were to be estimated for a period of 2 years. The vacancies which were assessed in 1989 were to be filled up following the procedure which was governed by the instructions then obtaining and not by the Railway Board's letter dt. 20.2.87 which was to be given effect from 1.7.91 only. As regards the question of allowing Respondent No.4 to appear for the test, the Respondents explain that it was done in compliance with a judgement of the Tribunal. Respondent No.4 qualified in the written test and hence allowed to appear for the viva voce also but his result was not published, as stipulated in the judgement in his case. The Respondents further contend that the Applicant appeared for the written test without protest but when he failed he decided to question the validity of the entire selection process.

6. Learned Counsel for the Applicant strongly urged the vacancies arising after 1.7.91 could only be filled in accordance with the revised policy of the Railway Board which was introduced w.e.f. 1.7.91. In this context he has placed reliance on the judgements in the following cases:-

- (1) Wg. Cdr. J.Kumar Vs. Union of India & Ors.
(AIR 1982 SC 1064).
- (2) Y.V.Rangiah & Ors. Vs. J.Sreenivasa Rao & Ors.
(AIR 1983 SC 852).

In Wg. Cdr. J.Kumar's case, it was held:

"17. Apart from what is stated above, it is settled law that the service conditions pertaining to seniority are liable to alteration by subsequent changes that may be introduced in the rules and except to the extent of

32

policy. This is obviously irregular. However, there is nothing on record to show whether the select panel was exhausted prior to 1.7.91 or whether any of the candidates selected in 1990 were promoted in the vacancies, if any, which arose on or after 1.7.91. In case ^{any} of the candidates selected in 1990 got promoted after 1.7.91, only such promotions could be questioned. But this has not been done nor such promotees arrayed as respondents because this application was filed much earlier when the viva voce was about to be held. In any case promotions made in the vacancies arising prior to 1.7.91 cannot be said to be illegal from any point of view. The plea of the Applicant for cancellation of the earlier selection process cannot therefore be upheld.

9. Evidently, the Respondents committed an error in the assessment of vacancies by taking into reckoning even the period (of 4 months) after 1.7.91. Thus, the point for consideration is whether on account of wrong calculation of vacancies, the entire selection process stands vitiated. In our considered view, it will not be just or proper to hold that each and every mistake or irregularity in the selection process would render the entire selection as invalid. In Dalpat Abasaheb Solunke Vs. Dr. B.S. Mahajan (AIR 1990 SC 434) it was held that the decision of a Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection or proved mala fides affecting the selection etc. In the present case, we have already noticed

.....6

SWP
7

31

protecting promotions that have already been earned under the previous rules, the revised rules will operate to govern the seniority and future promotion prospects of all the persons in the concerned service. There is, therefore no substance in the argument advanced by the appellant that it was not open to the Govt. of India to introduce a new principle or seniority by promulgation of the impugned rules so as to affect his rights for future promotion.

7. The above principle of law was elaborated in Y.V.Rangaiah's case. Relevant passage from the judgement reads as under:-

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the Respondents Nos.3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by amended rules. It is admitted by the counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

8. Applying the principle laid down in the above two judgements, it would be evident that the vacancies arising on or after 1.7.91 should have been left to be filled in accordance with the revised policy of the Railway Board which came into effect from 1.7.91. The Respondents, however, in assessing the likely future vacancies calculated the same for the period from 1.11.89 to 31.10.91. Thus, the vacancies, which were likely to arise between 1.7.91 and 31.10.91 were also to be filled up from out of the panel prepared in accordance with the then prevailing instructions and not as per the Railway Board's revised

.....5

h

Y.V.R.

that there was an irregularity in the manner in which the Respondents calculated the number of vacancies but that would, if at all, affect the promotions made on or after 1.7.91, but it cannot be said that the entire selection process would be vitiated thereby.

10. In the result, the application is dismissed. No order as to costs.

T. Chandrasekhara Reddy
(T.Chandrasekhara Reddy)
Member(J).

A.B. Gorthi
(A.B.Gorthi)
Member(A).

Dated: 28 Oct., 1993.

br.

[Signature]
Deputy Registrar(J)

To

1. The General Manager, S.C.Rly. Secunderabad.
2. The Chief Personnel Officer, S.C.Rly, Secunderabad.
3. The Chief Engineer (optg. Line)
S.C.Rly, Secunderabad.
4. One copy to Mr.S.Lakshma Reddy, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, SC for Rlys. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One sparecopy.

pvm

*6th copy
p.x.
J.*

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 28-10-1993.

ORDER/JUDGMENT:

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

in

O.A.No. 384/90

T.A.No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

pvm

