

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD

BENCH : AT HYDERABAD :

DA No.501/90.

Date of Judgment: 6.12.1990.

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...Applicant

Vs.

1. The Secretary (Establishment),
Railway Board, Rail Bhavan,
New Delhi.

2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.

3. Controller of Stores,
South Central Railway,
Rail Nilayam, Secunderabad.

...Respondents

Counsel for the Applicant : Shri G.V.Subba Rao, Advocate

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

CORAM:

THE HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

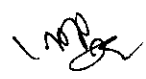
THE HON'BLE SHRI D.SURYA RAO : MEMBER (JUDICIAL)

(Judgment of the Division Bench delivered by
Hon'ble Shri D.Surya Rao, Member (J)).

The applicant herein is working as Head Clerk in the scale of Rs.1400-2300 and his next promotion is to the post of Chief Clerk in scale of Rs.1600-2660. The post of Chief Clerk is a selection post and promotion to this grade is on the basis of a written and viva-voce test. On 27-10-89 the Chief Personnel Officer issued an alert notice alerting 36 candidates and 6 candidates stand by to appear for selection for filling up of 12 vacancies of Chief Clerks comprising



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of 10 OC and 2 SC vacancies. The applicant has averred in his application and reply affidavit that 33 of the senior most Head Clerks and three SC candidates further down in the seniority list were alerted. According to the applicant the cadre strength of Chief Clerks was 28 posts. As per the quota since 15% and 7½% are to be reserved for SC/ST candidates only 4 posts were to be filled in by SC candidates and 2 posts by ST candidates. Since these vacancies had already been filled in by SC/ST candidates the applicant's case was that the 12 vacancies notified on 27-10-1989 should be filled-up only by 12 OC candidates and not by 10 OC and 2 SC candidates. Consequently the applicant had filed O.A.134/90 questioning the recruitment proposed to be made for 2 SC candidates. This Tribunal admitted O.A.134/90 on 20-2-90 and issued interim orders that the vacancies should be filled up in accordance with 40 point roster system but the posts held by the SC/ST should not exceed 15% and 7½% respectively at any given point of time. Earlier to the filing of OA 134/90 a written test had been held on 9-12-89. This was followed by a Supplementary test held on 2-2-90. Seventeen candidates were declared to have passed the written test and eligible for the viva-voce which was fixed on 27-2-90. This date had been fixed prior to filing of OA 134/90 which was admitted on 20-2-90. After filing of the OA 134/90 an alert notice was issued to the seventeen candidates who had passed the written test to appear for viva-voce. The applicant was one among those who had passed the written test and he also appeared

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for the viva-voce. This was followed by a memo dt.17-5-90 issued by the Chief Personnel Officer stating that 10 employees have qualified in the written test and viva-voce test and were included in the panel for appointment of Chief Clerk. Thereupon the applicant had filed the present application questioning the action of the 1st respondent in issuing the memorandum dt.17-5-90 limiting the panel to 10 names instead of 12 persons as originally notified. He seeks a direction to the respondents to produce the selection proceedings relating to the empanelment of Chief Clerks for the notified 12 vacancies and to direct the respondents to empanel the applicant herein for the 11th vacancy which has not been released so far inspite of the quota for SC/ST having exceeded the rule of reservation prescribed. It is contended that non-release of the name of the applicant though he qualified in the written and viva-voce test is in violation of his rights under Articles 14 and 16 of the constitution. It is further contended in regard to the 2 vacancies the respondents have sought to fill-up them on adhoc basis from among the candidates who have not qualified in the written and viva-voce test.

2. On behalf of the respondents a counter has been filed stating that the written test ~~was conducted~~ and the supplementary test ~~was~~ ^{was} held on 9-12-89 and 2-2-90 i.e. OA 134/90 was filed subsequently on 20-2-90. It is stated that the assessment of 12 vacancies was for a period of one year against the running roster Nos.5 to 16, which comprise

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of 10 OCs and 2 SCs. As early as on 27-10-89 a notification was issued alerting 36 persons including 6 persons belonging to SC community. Twenty four persons ^{were} alerted for the written test held on 9-12-89 and 4 persons at a supplementary test held on 2-2-90. Eight candidates out of the 36 gave their unwillingness to appear for the selection. The results of the written test was declared on 8-2-90 and 17 candidates were declared ^{as} ~~of~~ having secured the qualifying marks. One more candidate was declared to have secured the qualifying marks after adding notional seniority marks. Interim orders were passed in O.A.134/90 on 20-2-90. Since there was adequate representations from the employees belonging to reserved community, it was decided after obtaining the opinion from Assistant Law Officer of the Respondents, Railways, ^{that} 10 senior most candidates who were found suitable should be empanelled. The legal opinion was that the two vacancies meant for SCs need not be thrown open to OCs and that these two vacancies meant for reserved community can be filled on adhoc basis till the finalisation of the OA 134/90. It was there-
fore decided to limit the panel to 10 candidates only. The reasons given in the counter ^{for doing so} are that as per the Railway Board instructions dt.25-1-1983 the field of consideration is 1:3, ^{and} since 10 unreserved ^{vacancies were to be filled in the} ~~candidates were to be called;~~ ^{only only be three times 10 or 30.} the field of consideration was 30. Since 2 SCs were proposed to be empanelled, 6 SC candidates were called for written

test. If, however, as contended by the applicant the two posts meant for SCs are given to the OCs, then the field of consideration for unreserved candidates should be 36, whereas only 30 OC candidates were called. Since the direction of the Tribunal was received after the written test was held ~~and~~ ^{so} it was not possible to alert 6 more senior most candidates belonging to the OC category in a separate block. In the circumstances it is stated that the applicants claim that he should be considered and appointed to the 11th vacancy is untenable.

3. On behalf of the applicant a reply affidavit has been filed denying the correctness of the averments made in the counter. It is contended that initially 36 candidates were alerted by the office order dated 27-10-1989. This comprised of 33 senior most Head Clerks of whom 30 were OC candidates and 3 SC candidates. In addition 3 more candidates were alerted though Junior on the ground that they belong to the SC community. It is contended that if the three junior SC candidates are eliminated by virtue of the interim orders of the Tribunal in OA 134/90 yet it is clear that 33 of the senior most Head Clerks were alerted and ~~and~~ that selections ^{with it} took place, were made from among 33 such seniors. It is consequently contended that accepting the argument of the respondents that selection should be limited to ~~the~~ 1/3rd of the persons alerted the panel should comprise of 11 persons who have qualified in the written and

viva-voce and not 10. It is contended that if such a panel has been prepared ^{then} the applicant should have been included in the panel since he ranked eleventh in the select list.

4. We have heard the arguments of Shri G.V.Subba Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the Railways. The question that arises for determination on the basis of the pleadings put forth is whether the panel should comprise of ^{ten} ~~ten~~ names or eleven names. If the number of persons alerted according to seniority is 33 (excluding the three SC candidates who were initially alerted not on the basis of seniority but to give effect to the 40 point roster rule) then the number to be empanelled will be eleven. ^{alerted were only 30 then the number to be} If on the other hand the number ~~to~~ be empanelled will be 10. We are taking the number of persons alerted as the criterion and not the number who have appeared for the written examination as the former is the basis for the respondents for preparing a panel of 10 names. The applicant has enclosed to his reply affidavit a copy of the order No.P.608/Stores/C.C.89 dated 27-10-89 comprising of names of 36 persons alerted to be ready for a written test and 7 persons as stand byes i.e. ~~43~~ 43 persons were alerted. The applicant ^{has} ~~here~~ also enclosed a statement showing the positions of these 43 persons in the seniority list of Head Clerks as on 1-8-87 published by the Chief Personnel Officer in his letter No.P.612/Stores/H.C.86 dated 15-12-1987. A reading of these two annexures to the reply establishes beyond doubt that among the 36 persons alerted 33 were the

the senior most. Hence applying the Railway Board instructions dated 25-1-1983 referred to in the counter the panel should have been 1/3rd of the 33 senior most Head Clerks alerted viz., 11 and not ten as computed by the respondents. There is no basis for the respondents having limited the panel to 10 persons. The plea of the applicant that adopting the respondents own standard the panel should comprise of 11 persons has to be accepted. The application is accordingly allowed and the respondents are directed to empanel 11 candidates for promotion as Chief Clerks as on 17-5-1990 i.e. the date of the impugned order. If the applicant is the 11th candidate in the select list then he would be entitled to promotion from the date others in the panel were promoted as Chief Clerks with consequential benefits of arrears of salary and other service benefits. The panel will be subject to the conditions imposed in the impugned order dated 17-5-1990. No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice-Chairman

D. Surya Rao
(D. SURYA RAO)
Member (J)

Dated: 6th December, 1990. *[Signature]* 21/91
Deputy Registrar (Judl)

- To
1. The ^{av1/}Secretary (Establishment) Railway Board, Railbhavan, New Delhi.
 2. The Chief Personnel Officer, S.C. Railway, Railnilayam, Secunderabad
 3. The Controller of Stores, S.C. Rly, Railnilayam, Secunderabad.
 4. One copy to Mr. G.V. Subba Rao, Advocate 1-1-230/33, Chikkadapalli, Hyderabad.
 5. One copy to Mr. N.R. Devraj, SC for Rlys CAT. Hyd-Bench.
 6. One spare copy.

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ASQ 2/1/90
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APPROVED BY
COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

THE HON'BLE MR. D. SURYA RAO : M(J)
AND

THE HON'BLE MR. J. NARASIMHA MURTY : M(J)
AND

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

DATE: 24-9-61/2/90 ✓

ORDER / JUDGEMENT:

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

T.A. No.

W.P. No.

O.A. No.

501/90 ✓

Admitted and Interim directions
issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered/Rejected.

No order as to costs.

