

(39)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

OA 938/90.

Dt. of Order: 31-1-94.

S.S.Prasad

...Applicant

Vs.

1. Divisional Railway Manager,
SE Rlys, Waltair, Visakhapatnam-4.
2. Sr.Divisional Electrical Engineer,
(TRS), S.E.Rlys, Waltair,
Visakhapatnam.
3. Divisional Personnel Officer,
SE Rlys, Waltair,
Visakhapatnam-4.

....Respondents

Counsel for the Applicant : Sri M.Balakrishna Murthy

Counsel for the Respondents : Sri N.R.Devraj, SC for Rlys

CORAM:

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

THE HON'BLE SHRI T.C.REDDY : MEMBER (J)

....2.

JHP
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(Leo)

D.A. 938/90

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ORDER

¶ As per Hon'ble Shri A.B. Gorthi, Member

The applicant joined service as Shed-Khalasi in Steam Loco-Shed, Waltair on 18.3.1969. He was promoted on 1.12.1980 on ad-hoc basis as care-taker of Running Room in the scale of pay of Rs. 260 - 400 at Jagadelpur. Subsequently the applicant was posted as junior clerk (Rs. 260 - 400) on ad-hoc basis w.e.f., 15.3.1983. He continued to work as an ad-hoc junior clerk un-interruptedly till 26.6.87, when he was regularly appointed as a junior clerk ^{against} ~~out of~~ the departmental quota. The prayer of the applicant is to count his ad-hoc service as junior clerk from 15.3.83 to 19.8.87 for the purpose of his next promotion.

2. In their reply affidavit the respondents have not refuted the facts averred in the application, but their contention is, that the applicant's promotion as ad-hoc care-taker ^{and as} ~~from~~ ad-hoc junior clerk was made to fill-up temporary vacancies as a stop-gap measure. They have not accepted the applicant's contention that the ad-hoc promotion was made against regular vacancies. We need not go too deep into the position whether the ad-hoc promotion of the applicant was against regular vacancy or against a temporary or ^{ad-hoc} ~~on the term~~ vacancy. It is so because the fact remains that the ad-hoc appointment of the applicant was made not in accordance

with the relevant recruitment rules. The respondents have drawn our attention to establishment serial No. 207/59 which relates to promotion of Class IV staff to Class III posts in the service. A certain quota was laid down for promoting class IV employees to Class III posts. The instructions lay down that such promotion should be made on the basis of selection and that there should be written test to assess the educational attainments of candidates followed by interview where considered necessary. Class IV employees were also eligible for appointment to Class III posts by applying to the Railway Service Commission.

3. In the instant case there is no doubt that the applicant was fully qualified to be appointed as a junior clerk. At the same time his promotion on ad-hoc basis was made not in conformity with the relevant recruitment rules. In this context we may refer to the judgement of the Hon'ble Supreme Court in Direct Recruit Class II Engg. Officers' Association Vs State of Maharashtra reported AIR 1990 SC 1607 wherein para 44 (A) may be reproduced which is as follows

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is on an ad-hoc basis and not according to rules and regulations

a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

4. Clarifying the above but reiterating

the same the Hon'ble Supreme Court in ^{the} case of Keshav Chandra Joshi Vs Union of India AIR 1991

SC 284 stated as under:-

The proposition 'A' lays down that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies postulating that where the initial appointment is only ad-hoc and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The quintessence of the propositions is that the appointment to a post must be according to rules and not by way of ad-hoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment thus made was dehors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date.

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5. It is thus well settled that where^{in an} appointment to a post is not made according to rules, the entire length of such service cannot be counted for seniority. In the instant case the applicant's promotion firstly as care-taker and secondly as junior clerk was done on an ad-hoc basis without [redacted] subjecting him to the required tests as laid down in the relevant instructions governing recruitment to the posts of ^{care taker and} junior clerk. In ^{this} view of the matter, the applicant's requests for counting ^{his} ad-hoc service for the purpose of his seniority ^{and} for further promotion cannot be accepted. The application [redacted] is dismissed. There shall be no order as to costs.

(J. CHANDRASEKHARA REDDY)
MEMBER (JUDL.)

(A.B. GORTNI)
MEMBER (ADMN.)

Dated : The 31st January 94.
(Dictated in Open Court)

15/2/94
Deputy Registrar(J)

To spr

1. The Divisional Railway Manager, S.E.Rlys, Waltair, visakhapatnam-4
2. The Sr.Divisional Electrical Engineer, (TRS(S.E.Rlys, Waltair, visakhapatnam.-4
3. The Divisional Personnel Officer, S.E.Rlys, Waltair, visakhapatnam-4.
4. One copy to Mr.Balakrishna Murthy, Advocate, 49-35-27 Abidnagar, Akkayyapalem, visakhapatnam-16.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
6. One spare copy.
7. One copy to Library, CAT.Hyd.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. J. POLICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

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

AND

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

AND

THE HON'BLE MR. F. RANGARAJAN : MEMBER
(ADMN)

Dated: 31-1-1994.

ORDER/JUDGMENT:

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

in

C.A.No. 938/90

T.A.No. (W.P.No.)

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

