

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

D.A. No. 723/91.

Dt. of Decision : 1.8.1994.

Mr. J. Veeraraju

.. Applicant.

Vs

1. The Secretary,
Railway Board,
New Delhi.
2. The General Manager,
SC Rly, Sec'bad.
3. The FA & CAO
SC Rly, Sec'bad.

.. Respondents.



Counsel for the Applicant : Mr. A. Srinivas

Counsel for the Respondents: Mr. N.V. Ramana, SC for Rlys.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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O.A.No.723/91

JUDGEMENT

(As per the Hon'ble Sri R. Rangarajan, Member (A))

Applicant in this O.A. initially joined the Railway service as Clerk Gr.II in the Divisional Accounts Office at Vijayawada in the year 1957. He was later promoted as Clerk Gr.I in 1960 at Vijayawada itself. In the year 1973, he was promoted as Section Officer, Accounts, and posted at the Accounts Office, Sholapur. It is alleged that he did not carry out his transfer in time, thereby refusing his promotion. However in February 1973 he was posted subsequently at Miraj, under D.E.N. (Const.), Miraj in the same capacity. It is reported that he did not join there also and applied for leave. Hence it was treated that he refused promotion and thereby he was debarred for promotion for one year. On sympathetic consideration, he was promoted within 6 months during the ~~debarred period~~ ⁱⁿ October 73, when a clear vacancy arose at Vijayawada. In the meanwhile, some of his juniors were promoted as Section Officer, Accounts, against ~~for-tuitous~~ vacancies. He went on deputation to B.H.E.L. Ramachandrapuram on 10-4-79 and on his repatriation he was posted to the Workshop Accounts Office at Guntupalli near Vijayawada on 20-4-80. He was representing for his posting to Vijayawada even though he was posted to Guntupalli which is hardly a few kilometers away from Vijayawada. Finally he was transferred to office of FA & CAO Railway Electrification, Vijayawada on 10-2-83 when a vacancy arose in that office. He was not called for selection to the post of Asst. Accounts Officer in S.C.

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Railway during the year 1987 as he was not coming within the zone of consideration because of his seniority position in the cadre of Section Officer/Divisional Accountant. On his willingness to go to Bilaspur as A.A.O. in R.E. Organisation when such a willingness was called for by the R.E., he was posted at Bilaspur as A.A.O. under C.P.M./R.E., Bilaspur on 19-4-88. In the selection held on 10-12-88 for promotion to the post of A.A.O. against the 75% quota in S.C. Railway, he had not come out successful finally in the selection though he qualified in the written test. On completion of the period of deputation, he was repatriated back to S.C. Railway as S.S.O.(A) and joined as S.S.O.(A) on 6-3-90. In the selection held during the year 1990 for the post of A.A.O. in S.C. Railway, the applicant is reported to have given his unwillingness for appearing for the examination but represented for posting him as A.A.O. in open line in S.C. Railway as he had already worked as A.A.O. in the R.E. Organisation. But his representation was negatived. Aggrieved by the above, he has filed this application U/s 19 of A.T.Act, 1985 for promotion to Class II (Group-B) post and consequential promotion as Sr. Accounts Officer.

2. The respondents have filed a detailed counter affidavit traversing the various contentions raised by the applicant.

3. The grievance of the applicant can be broadly classified under 3 heads.

(1) His alleged frequent transfer from Vijayawada in the Sr. Supervisor cadre in the Accounts Department of S.C.Railway and against debarring him for promotion for 1 year when he did not carry out his transfer to Miraj and promotion of his juniors in the meanwhile.

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(2) Non-consideration of his name for the 1987 Group-B selection in S.C. Railway under the pretext that he did not come within the zone of consideration and his non-empanelment in the 1988 selection and not promoting him without subjecting him to any tests in the year 1990 when he was repatriated from R.E. Organisation as he had already worked as Adhoc Accounts Officer in R.E. at Bilaspur.

(3) He incurred financial loss due to his posting as A.A.O., R.E. at Bilaspur and ⁱⁿ not acceding to his requests to post him at Vijayawada as A.A.O. under C.P.M. Railway Electrification, Vijayawada as was done in other cases in other departments inspite of his repeated requests for the same and as his request for posting him as A.A.O. in R.E., Vijayawada was refused, he was forced to come to Vijayawada on reversion for being posted at Vijayawada as Section Officer/ Divisional Accountant.

4. The above grievances were examined on the basis of reply affidavit filed by the respondents and on the basis of records available.

5. The first grievance is regarding his transfer from Vijayawada as a Sr. Supervisor and not accommodating him at Vijayawada itself when promoted as Section Officer Accounts/ Divisional Accountant. As a Senior Supervisor it is not always possible to accommodate him in the place of his choice. Though he was initially posted to Sholapur as Divisional Accountant, it was later changed to Miraj in February 1973 as he had not carried out his transfer to Sholapur. As he had applied for leave when posted to Miraj without joining there in time, it



was treated as refusal for promotion and he was debarred for promotion for one year. The respondents can have no other option except to debar him for promotion as he failed to join at Miraj. As a Sr. Supervisor, he cannot pick and choose his place of posting to suit his convenience without caring for the requirements of the organisation. However, taking a sympathetic consideration of his case, he was posted at Vijayawada waiving the debarred period to the extent of 6 months. In the meanwhile his juniors namely S/Shri L.Panchapakesan and K. Venkataramana were promoted on adhoc basis against leave vacancies. He cannot complain against the promotion of his juniors when he himself had failed to carry out his promotional transfer. The respondents state that the applicant remained in Vijayawada for 35 years of his service, which was not controverted by the applicant, in various capacities at Vijayawada though he is transferable to other units outside when he became a Sr. Supervisor. The submission of the respondents in transferring him on exigencies of service is reasonable and on that score he cannot have any grouse. If his juniors are promoted in the meanwhile when he was debarred from promotion, he cannot question the same as the promotions had been done as per rules. As the applicant also did not challenge the transfer and promotion of his juniors during that period on valid grounds he has no ground to raise the same after a lapse of over a decade. The respondents also reduced the debarred period to 6 months which concession itself speaks that the respondents had no intention to harass him. In view of the above we see no substance in this allegation.

6. The second grievance is that he was not promoted to the post of A.A.O. in the open line. In the year 1987, a departmental selection against 75% quota for A.A.O. was

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conducted by S.C. Railway. A provisional integrated seniority list was issued on 17-8-87 calling for objections if any from amongst those in the provisional seniority list. His name was shown as item No.34 in the provisional seniority list. However, in the final revised combined seniority list of S.O.(A)s/TIAs/ISAs to appear for 75% quota of A.A.Os in Group 'B' written test, his name was deleted from the zone of consideration as can be seen from the letter No.AAO/E01 dt. 4/7.9.1987. In the Annexure 'A' to that letter, it has been clearly stated that the applicant namely "Shri J.Veera Raju, S.A.O. (A) (Sr.No.34) of notification dt. 17.8.1987 is deleted as he is working as SOA from 23.10.1973 and does not come within the zone of consideration for the present selection". Officials who were called for the written test for A.A.O. selection had all joined the grade of SOA/TIA/ISA earlier to 23.10.1973, as can be seen from Annexure 'A' to the above quoted letter dt. 4/7-9-1987. As none of his juniors have been called for the A.A.O. tests in 1987, and he has not come within the zone of consideration for calling him for the tests, he cannot have any complaints in regard to the selection for A.A.O. in 1987. If he is aggrieved by the final combined integrated seniority list issued as Annexure to the letter dt. 4/7-9-1987, he should have challenged the same at that time, which he failed to do so. Thereby he accepted his position in the integrated seniority list issued on 4/7-9-1987 showing the combined seniority position of S.O.(A)/TIA/ISA.

7. In the year 1988, he has not come out successful for empanelling him for the post of A.A.Os. though he had qualified in the written examination held on 10.12.1988 for the post of Accounts Officer in S.C.Railway against

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75% quota. If he is aggrieved by this selection, he should have challenged the same then and there which he did not care to do. The empanelment has become final and he cannot question the same at this distant date. The applicant contends that the selections held after 1.4.1987 are not in accordance with the rules. He has not quoted the lacuna or the deficiencies in projecting this contention. The respondents in their reply statement, state~~s~~ that the para 205(b)(iii) of I.R.E.M. published during the year 1960 has been superceded by the issue of the Railway Board's letter No.E(GP)/74/2/44 dt. 22/23.6.1974 wherein a written test and a viva-voce have been prescribed for selection to Group 'B'. Unless one qualifies in written test and viva voce he cannot get promotion to Group 'B'. As the applicant failed in the viva-voce held on 24.1.1989 for which written examination was held on 10.12.1988, he cannot claim empanelment in that selection. Hence this contention also fails.

8. As he did not prefer to appear for selection to the post of A.A.O. in the year 1990, he cannot claim empanelment during that year also. Whether it is a case of his refusal or not to appear for the selection during the year 1990 need not be gone through now as it is very belated, and no material has been brought on records by the applicant on this issue.

9. His next contention is that he should have been posted as A.A.O. in the regular cadre on his repatriation from R.E. In this connection, the respondents state that "there are no instructions for granting adhoc promotions compulsorily in the regular cadre to a person who is repatriated from deputation though from a higher cadre no matter how long he might have worked in the higher grade

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outside the regular cadre. As long as the applicant worked in the R.E. organisation, he enjoyed the benefits of promotion, even though his seniors in the regular cadre were working only as Section Officers. Hence, there is no discrimination meted out to him." There is force in this argument. Hence, we see no merit in the contention of the applicant that he should be posted as A.A.O. atleast on adhoc basis on his repatriation to S.C.Railway.

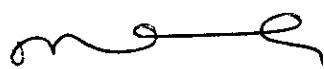
10. The third and the last contention is that he incurred financial loss when posted as A.A.O. R.E. at Bilaspur and he was forced to accept ~~in~~ the lower grade to come over to Vijayawada when his request for posting him as A.A.O. at Vijayawada was not acceded. The applicant himself stated at the bar that his financial loss when posted as A.A.O. Bilaspur was by way of reduction in the allowances. This reduction cannot be stated as a financial loss as the allowance varies from place of posting. As there is no loss of emoluments in his salary, he cannot complain of loss of emoluments because of reduction in the allowances at Bilaspur compared to the allowances he was getting at Vijayawada. As he could not be accommodated as A.A.O. at R.E., Vijayawada, he voluntarily accepted reversion and came to Vijayawada on his choice due to his family commitments. If there is any irregularity in his reversion while being posted to R.E., Vijayawada, he should have challenged the same when he was posted on reversion to Vijayawada in the year 1989. As he has not challenged the same at that time, he cannot claim any relief now due to laches.

11. The applicant states that in other cadres, request transfers to Madras and Vijayawada in the same category in adhoc Group 'B8' was given which was denied to him. Hence,

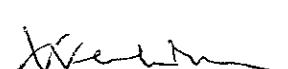


he contends that there is violation of constitutional rights under Article 14 & 16. As he does not belong to that cadre, we see no violation of any constitutional rights, much less any discrimination meted out to the applicant.

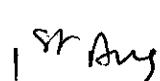
12. In the result, we see no substance in this O.A. and hence it is dismissed. Under the circumstances there will be no order as to the costs.

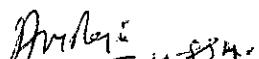


(R. Rangarajan)
Member (Admn.)



(V. Neeladri Rao)
Vice Chairman


Dated July, 1994.


Dy. Registrar (Judl)

Copy to:-

1. The Secretary, Railway Board, New Delhi.
2. The General Manager, South Central Railways, Secunderabad.
3. The F.A. & C.A.O., South Central Railways, Secunderabad.
4. One copy to Mr. A. Srinivas, Advocate, CAT, Hyderabad.
5. One copy to Mr. N. V. Ramana, A.C. for Railways, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare.

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