

411

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO.879/91

DATE OF JUDGEMENT:

29-7-

1993

Between

T.A. Hansraj

.. Applicant

and

1. The Chairman, Railway Board,  
New Delhi

2. The Secretary,  
Railway Board,  
New Delhi.

3. The General Manager,  
South Central Railway  
Secunderabad

4. The Chairman,  
Railway Recruitment Board  
Secunderabad

5. Shri Rameshan  
Sr.D.M.E./Loco, Hyderabad Division,  
Secunderabad

.. Respondents

Counsel for the Applicant :: Mr KSR Anjaneyulu

Counsel for the Respondents :: Mr NR Devraj, Sr. CGSC  
Mr Suryaprakasa Rao for R5

CORAM:

HON'BLE SHRI A.B. GORTHY, MEMBER (ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE  
SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This application is filed under Section 19 of the  
Administrative Tribunals Act to set aside the Railway  
Board letter No.90/E(GR)I/11/26 dated 30.8.91

appointing Shri Rameshan (5th respondent) as Member  
Secretary, as illegal and pass such other order or orders

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142

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as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief are as follows:

3. The applicant was appointed in the Indian Railways on 6.10.1958. After earning certain promotions, the applicant was admitted to Jr. Scale Group 'A' on 24.12.1980. The applicant belongs to Scheduled Caste Community. The applicant was promoted as Sr. Divisional Personnel Officer on adhoc basis on 4.6.1987 and was confirmed in the Jr. Administrative Cadre with effect from 18.10.1989. As per Railway Board letter dated 7.11.89, the applicant was appointed as Member Secretary, ~~purely~~ on temporary basis in the administrative interest, till further orders. The appointment of the applicant on adhoc basis as Member Secretary, <sup>was</sup> ~~is said to have been~~ made in a vacancy that arose due to the superannuation of the person who was regularly working in that post.

4. Appointment to the Post of Member Secretary of Railway Recruitment Board, is governed by the Railway Recruitment (Chairman, Member Secretaries and Asstt. Secretaries) Rules, 1985 and amendment rules 1988. These rules are made by President in exercise of powers conferred by the Proviso to Article 309 of the Constitution. To fill up the post of Member Secretary, Railway Recruitment Board, Secunderabad, a Circular was issued to all the Railway and concerned units under Ministry of Railways, Railway Board's Notification dated 6.10.1989, to send the names of the eligible officers to the Railway Board. The last date for

T. C. M.

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142

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receipt of such names was 27.10.1989. As per the Railway Recruitment Rules, a candidate should not be less than 52 years on the date of forwarding of the request by Ministry of Railways to the Union Public Service Commission for making the selection. The ~~max~~ field of selection shall consist of Serving Officers in the Ministry of Railways, Railway Board Secretariat, Zonal Railways, Production Units, etc., holding post in the

- i) Junior Administrative Grade or
- ii) Group 'A' senior scale officers with 5 years service in the grade rendered after appointment thereto on regular basis.

iii) The maximum and minimum age for the post of Member Secretary is 58 years and 52 years respectively.

Selection on each occasion shall be made in consultation with the UPSC by the Railway Board. According to the applicant, he had all the required qualifications to be considered for the post of Member Secretary, in pursuance of the Railway Board letter dated 6.10.1989 calling for applications from eligible candidates for filling up the post of Member Secretary.

5. According to the applicant, he had submitted his application on 18.11.1989 for the said post of Member Secretary, in response to Chief Personnel Officer's letter dated 22.10.1989, fixing 20.11.1989 as last date for submission of application for onward transmission to Railway Board. According to the applicant, his application had been forwarded to the Railway Board by the Chief Personnel Officer on 20.11.1989. The applicant understands that the Railway Board has received the application well in time. The applicant had every belief, that he would also be considered for appointment along with others for the post of Member Secretary. The applicant subsequently came to know that

T. C. M.

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the Selection Committee of UPSC Members was scheduled to meet at Secunderabad on 7.8.1991. The applicant further came to know that his name was not in the panel of names for consideration by the Selection Committee. The applicant immediately gave a telegram on 2.8.1991 to Chairman Railway Board pointing out the omission of his name from the panel of names to be considered by the Selection Committee. The applicant also submitted a detailed representation on 3.8.1991 specifically urging that he had submitted his application in time on 18.11.89 and the same was sent to Railway Board on 20.11.89 and that he fulfilled the conditions prescribed in the Rules for appointment as Member Secretary and as he was also working as Member Secretary on adhoc basis, that his name was liable to be considered for the said post along with others. According to the applicant, inspite of his application and subsequent telegram dated 2.8.1991 followed by his representation dated 3.8.91, his name was not included in the panel of officers called for selection. The selection was finalised on 7.8.91 on the basis of the panel that was available before the Selection Committee. The applicant's name had not been considered for the said post, even though he had a right to be considered. The applicant was aggrieved by the action of the respondents in not considering his name and in appointing 5th respondent (Mr. Rameshan) as Member Secretary in the said selection on 7.8.91. Hence, the present OA is filed by the applicant, for the relief(s) as already indicated above.

6. Counter is filed by the official respondents 1-4 opposing this OA. ~~Respondent No. 5 has filed a separate counter.~~

T. C. M.

125

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7. In the counter filed by the respondents 1-4 it is maintained that the Railway Board did not receive the required number of volunteers as per the Recruitment Rules, as per Railway Board's Notification dated 6.10.89 and again, a letter dated 19.7.90 was issued calling for volunteers by the Railway Board fixing the last date for receipt of applications as 30.8.90, and that the applicant had not applied to the said post either as per notification dated 6.10.89 or as per Railway Board's letter dated 19.7.90. So, it is the case of the respondents 1-4, that as the applicant never applied to the said post and as his application was not before the Selection Committee, there is no question of his application being considered for the said post and so, it was not open for the applicant to make any grievance out of omission of the applicant's name for the said selection. It is also the case of the respondents 1-4 that the applicant had not attained 52 years of age as on the date of closing of the receipt of the application as per their notification dated 6.10.89. It is also the contention of the respondents that the respondent No.3 might have withheld the application of the applicant without forwarding the same to the railway Board for the reason of non-satisfaction of the condition of age of the applicant and hence, the applicant cannot make out any grievance, as he did not have the required age qualification to be considered for the said post as he had not attained 52 years as on 20.11.89 which was the last date for receipt of applications as per notification dated 6.10.1989.

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8. The 5th Respondent (Mr. Rameshan) has filed a separate counter. He has also maintained in his counter that there was no proof to show that the applicant had applied for the said post of Member Secretary. It is also contended on behalf of the 5th respondent that the applicant was not qualified for the said post with regard to his age by 20.11.89, as he was less than 52 years. It is also further maintained ~~on behalf of~~ the 5th respondent had been duly selected and appointed by Competent authority and as this OA is filed by the applicant, after the 5th respondent was selected and appointed on regular basis, as per the recruitment rules the appointment of the fifth respondent cannot be set aside.

9. We have heard in detail Mr. K.S.R. Anjaneyulu, counsel for the applicant and Mr. N.R. Devraj, Standing counsel for Respondents 1-4 and Mr. Suryaprakasa Rao, for Respondent No. 5.

10. Annexure 4 to OA is the copy of the letter of Chairman, Railway Recruitment Board dated 18.11.1989 to the Chief Personnel Officer, Secunderabad which reads as follows:-

".....with reference to notification issued vide letter No. P.GAZ/446/Misc. dated 20.10.1989, the application in duplicate, submitted by Sri T.A. Mansraj Member Secretary (ad-Moc) RRB, SC is sent herewith.

Sd/-  
For Chairman"

As could be seen, the letter No. P.Gaz/446/Misc. dated 20.10.89 has got reference only to the letter of the Railway Board dated 6.10.1989, that was circulated under GM(P), South Central Railway letter No. P/Gaz/446/Misc. dated 12.10.89 calling for applications for the post of

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Member Secretary, Railway Recruitment Board, Secunderabad. So, unless the applicant had made an application to the said post, we are unable to understand why there was need on the part of the Chairman, Railway Recruitment Board, Secunderabad, to address a letter to the Chief Personnel Officer, South Central Railway, Secunderabad, that he had submitted an application in duplicate of the applicant herein. Nodoubt, it is contended on behalf of the Respondent No.5 by his counsel Mr.Surya Prakasa Rao that the said letter <sup>internal</sup> is correspondence and that a copy of the said letter is not marked to the applicant, so it was not open for the applicant to rely on internal correspondence and try to substantiate his case. To <sup>prove</sup> certain facts, internal correspondence also can be relied upon. This is a case, where there is a denial by the official respondents 1-4 the applicant as having applied to the said post of Member Secretary. In view of the said denial it is open to the applicant to rely on internal correspondence also to substantiate his case. So, the said letter, even though is in the nature of internal correspondence in between <sup>Railway Recruitment Board</sup> the Chairman and Chief Personnel Officer, Secunderabad we see no impediment in accepting the contents of the said letter. From the contents of the said letter, as already pointed out, there cannot be any doubt about the fact that the applicant had applied for the said post of Member Secretary, Railway Recruitment Board, Secunderabad, well ahead in time. If not, there was no need for the Chairman Railway Recruitment Board to address a letter to Chief Personnel Officer, SC Rly, informing him that the application of the applicant in duplicate is sent therewith.

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There is also one more circumstance which establishes that the applicant had applied for the said post well in time. At the time of hearing of this OA on 12.7.93, the counsel for the applicant submitted a letter of the Chief Personnel Officer, Secunderabad dated 4.12.92 and addressed to the applicant stating that the application of the applicant dated 18.11.89 forwarded by the Chairman Railway Recruitment Board, Secunderabad, under his docket dated 18.11.89 had been received in the Personnel Branch Headquarters (correspondence) on 20.11.89. The letter of the Chief Personnel Officer further stated that the same (application of the applicant for the post of Member Secretary) had been forwarded to Railway Board as an enclosure to the office letter dated 12.10.89 of Headquarters, Personnel Branch. So, from the letter of the Chief Personnel Officer dated 12.4.92 that was produced at the time of hearing of this OA, it also becomes amply evident that the Chief Personnel Officer in his turn had also forwarded the application of the applicant to the Railway Board. So, once it is accepted that the Chief Personnel Officer had forwarded to the Railway Board the application of the applicant for the post of Member Secretary, the presumption is that the Railway Board had received the said application. It is quite possible that in the office of the Railway Board that the application of the applicant instead of keeping it in the proper section, might have been kept in another section and so had not been placed before the competent authority, and in that way, the application of the applicant might not have been taken into consideration for the post of Member Secretary. Even assuming for argument sake that the

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Chief Personnel Officer had withheld the application of the applicant without forwarding to the Railway Board, the applicant cannot be made to suffer for the lapses of top officials in the Railways. We may point out, that there is no doubt about the fact that the applicant had every eligibility to be considered to the post of Member Secretary. be considered for the said post though he had no right to. The applicant, had also a right to the said post. This is a case where the applicant had been denied equality of opportunity for the post of Member Secretary and hence thus there is violation of fundamental right under ~~xxxx~~ Article 16(1) of the Constitution of India. The equality of opportunity in a matter relating to employment, implies equal treatment to persons similarly situated or in the same category ~~underxxxxxxx~~ as the applicant. It postulates equality of conditions under which a number of persons belonging to the same category compete for the same opportunities and a just and impartial application of uniform and legally valid standards in deciding upon competing claims. Admittedly, in this case, the 5th respondent and two others namely Sri B.K.Jain and Sri NVS Rao who were eligible for the said post, had been considered. But, as already pointed out, the applicant herein also had a right to be considered for the said post. But, admittedly, the applicant had not been considered for the said post. The explanation offered by the official respondents 1-4 is that the applicant had not applied to the said post. But, we have made it clear in the earlier part of the judgement that the applicant had applied to the said post of Member Secretary, through proper channel, and, that the same had also been received by the office of the Railway Board and the same should have been misplaced in some section or other, without being placed before the competent authority who had to consider and select a suitable person. As already pointed out, even at the level of Chief Personnel Officer, the application of the applicant, if had been

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withheld<sup>not</sup> for valid reasons the applicant cannot be made  
to suffer as such action would be violative of Article 16 of  
the Constitution of India which delays with the denial of  
"Equal Opportunities in the matter of Employment" and which  
Article forbids arbitrary action on the part of the concerned.  
As a matter of fact, in this case, there is ample  
proof that the application had been sent to the Railway  
Board and that the Railway Board had received the same.  
So, in not considering the application of the applicant  
for whatever reasons it might be, the applicant's right  
had been infringed and we see no other alternative except  
to interfere with the appointment of Member Secretary, that  
had been made.

11. Admittedly, the post (Member Secretary) for which  
three persons were considered other than the applicant  
herein is only one. The applicant had applied admittedly  
for the same post of Member Secretary for which the other  
three persons namely S/Sri BK Jain, NVS Rao and Rameshan  
(R5) had applied and were considered. But as the post is  
only one, and among the competitors the Applicant had not  
been considered, we see no other alternative except to hold  
that the appointment so made without considering the applicant  
is illegal and set aside the same.

12. It is contended on behalf of R1 to R5 that the  
applicant had no eligibility as he had not completed 52  
years of age on the date 20.11.89. No doubt prior to  
1988 the Railway recruitment rule was that the officer  
should have attained 52 years by the last date of receipt  
of application for which they had applied. But the said  
rule had been amended in the year 1988, and as per amended

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31

rules, the candidate should not be less than 52 years of age on the date of forwarding the request by Ministry of Railways to the UPSC for making selection. The applicant's date of birth is 11.11.1938. In this case, we are informed that the applications of the competing candidates for the post of Member Secretary, were forwarded to the UPSC on 11.3.91, by which date, the applicant had completed 52 years. So in view of this position, we have no difficulty in rejecting the contention of the counsel of the respondents that the applicant did not have the required age qualification for applying to the said post of Member Secretary. So far, the other contention of 5th respondent that his appointment cannot be set aside as he had been duly appointed by the competent authority, we may straight-away point out that the applicant had a right to be considered for the said post and as he had not been considered for the said post, he had every right to approach this Tribunal to question the action of the respondents. This Tribunal had come to the opinion that the action of the respondents is not considering the case for the applicant, even though the applicant had applied for the said post well in time, and his application having been received by the Railway Board, is unreasonable and so the action of the Respondents 1-4 is liable to be struck down. The protection against arbitrary, malafide or unreasonable actions is very much required in the matter of appointments. So, it will not be possible to do justice to the applicant in this case without setting aside the appointment of the 5th respondent to the post of Member Secretary and permitting the respondents 1-4 to appoint suitable persons afresh in accordance with law. So it is not open to plead for R5, that his appointment as Member Secretary is valid and so his Appointment can not be interfered by this Tribunal.

13. It is faintly contended that as the Member Secretary

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To

1. The Chairman, Railway Board, New Delhi.
2. The Secretary, Railway Board, New Delhi.
3. The General Manager, S.C.Rly, Secunderabad.
4. The Chairman, Railway Recruitment Board, Secunderabad.
5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, SC for Rlys. CAT.Hyd.
7. One copy to Mr.Suryaprakasa Rao, Advocate, CAT.Hyd.
8. One copy to Deputy Registrar(J)CAT.Hyd.
9. One copy to Library, CAT.Hyd.
10. Copy to All Reporters as per standard list of CAT.Hyd.
11. One spare copy.

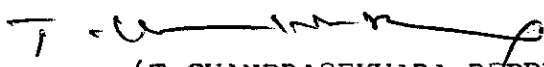
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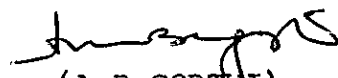
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52

posts are available at different divisions of the Railway on All India basis, the applicant can be considered for some vacancy in some other Division, and so the appointment of the 5th respondent is not liable to be set aside. The applicant and two others whose names were already mentioned in this judgement had applied only for the post of Member Secretary, Railway Recruitment Board, Secunderabad. The cases of the 5th respondent and two other had been considered only against the vacancy of Member Secretary, Railway Recruitment Board, Secunderabad. So, that being the position, it is not open for the 5th respondent to contend that the applicant herein can be considered for some other vacancy in some other Division. As a matter of fact, the applicants does not have a right to be considered for some other vacancy in some other division as the applicant has applied only for the post of Member Secretary, Railway Recruitment Board, Secunderabad. So, we see no force in the <sup>contention of the</sup> 5th respondent.

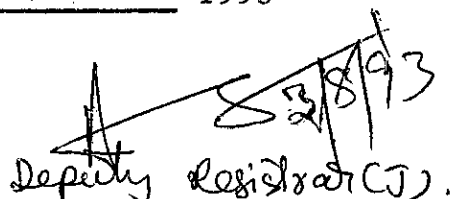
14. In the result, we set aside the Railway Board's letter dated 30.8.91 appointing Shri M.Rameshan, 5th Respondent, as Member Secretary, Railway Recruitment Board, Secunderabad and direct the respondents 1-4 to make a fresh appointment to the post of Member Secretary Railway Recruitment Board, in accordance with rules and regulations. CA is allowed. Parties shall bear their own costs.

  
(T.CHANDRASEKHARA REDDY),  
Member (Judl.)

  
(A.E.GORTNI)  
Member (Admn.)

Dated: 29-7-1993

mvl/sd

  
Deputy Registrar (CJ).

120/91