

28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

OA.919/91

date of decision : 5-12-94

V. Madhusudhana Rao

: Applicant

Versus

1. Chief Personnel Officer
SC Railway, Rail Nilayam
Secunderabad

2. Controller of Stores
S C Railway
Rail Nilayam
Secunderabad

: Respondents

Counsel for the applicant

: G.V. Subba Rao, Advocate

Counsel for the respondents

: V. Bhimanna, SC for
Railways

CORAM

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. R. RANGARAJAN, MEMBER (ADMN.)

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O.A. No. 919/91.

J U D G E M E N T

(As Per Hon'ble Shri Justice V. Neeladri Rao, Vice-Chairman)

This O.A. was filed praying for a direction to the respondents to empanel the applicant against one of the remaining two vacancies of Chief Clerks which are to be filled in by O.C. candidates and to regularise the applicant in the said post from the date the other ten candidates were regularised as Chief Clerks with all consequential benefits such as arrears of salary etc.

2. The facts which are relevant and which are not in controversy are as under:-

Alert notice dt. 27.10.89 was issued to fill up 12 vacancies of Chief Clerks of which 2 were reserved for S.Cs. As the zone of consideration was 3 times the number of the vacancies to be filled, 30 O.C. candidates and 6 S.C. candidates in the category of Head Clerks were alerted. O.A.No. 134/90 was filed questioning the filling up of the posts of Chief Clerks by following the 40 point roster. As per interim order dt. 22.2.90, the respondents were directed to fill the vacancies in accordance with the 40 point roster system, but added that the number held by the SC/ST in the post of Chief Clerks should not exceed 15% and 7½ respectively at any given point of time. 17 candidates were successful in the written test and they were called for interview. Selection process was concluded by publishing a panel of 10 candidates by empanelling O.C. candidates only. It is the case of the respondents that as the S.C. candidates in the category of Chief Clerks were already in excess of 15%, the remaining 2 vacancies of Chief Clerks were not filled up.

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Shri I.N. Mony, one of the 17 candidates who succeeded in the written test filed O.A.No. 501/90 challenging the non release of the names in regard to the remaining 2 vacancies, and for a direction to the respondents to empanel him ^{by one} out of the remaining 2 vacancies. The said O.A. was allowed with a direction to empanel 11th candidates for promotion as Chief Clerks. It is stated for the respondents that out of the 6 S.C. candidates who were alerted as per notice dt. 27.10.89 three SCs had come within the 33, on the basis of their seniority, and thus 33 in the zone of consideration were considered, and hence the 11th vacancy could be filled up and as Shri I.N.Mony was the 11th candidate on the basis of seniority from amongst those who were selected he was given appointment. Shri S. Krishnamurthy who was the 12th candidate on the basis of seniority from amongst the selected candidates filed O.A.No. 551/91 praying for a direction to the respondents to consider his case for the remaining vacancy. As 36 candidates should be considered on the basis of seniority for the 12 vacancies and as only 33 on the basis of seniority were alerted, notification dt. 15.7.91 was issued as a continuous process of selection for filling up the 12th vacancy and as per the said notification the next 3 eligible candidates from amongst Head Clerks on the basis of seniority were alerted. As Shri S. Krishnamurthy was selected, and as he was the 12th candidate from amongst the selected candidates his name was empanelled for the 12th vacancy as per the panel dt. 10.10.91.

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3. Shri J.Srinivasulu, who is at Serial No.3 out of the first 10 empanelled candidates, refused promotion. Shri I.N.Mony who has been promoted as Chief Clerk was posted in the place to which Shri J.Srinivasulu was posted. The applicant who claims to be 13th as per the seniority from amongst the selected candidates is urging that he should be promoted in the vacancy which was not filled due to the refusal of promotion by Shri J.Srinivasulu.

4. Thus the point for consideration is whether the consequential vacancy arisen due to the refusal of promotion by the empanelled candidate has to be filled up by empanelling the candidate next to the last of the empanelled candidate or whether the said vacancy should be considered along with the other vacancy for later selection, if the empanelled candidate refused promotion even for the second time.

5. Both sides submitted that there is no specific provision in the Indian Railway Establishment Manual as to what course they should adopt in such a contingency. As such the matter has to be considered in accordance with the relevant provisions.

6. Both the posts of Head Clerk and Chief Clerk are in Group-C. It is thus a case of promotion within the group in case of promotion from the post of Head Clerk to Chief Clerk. Paras 210 to 227 in Section B, Chapter-II of IREM Vol.I deal with the promotion to Group C posts. It is stated that the promotion from the post of Head Clerk to the post of Chief Clerk is by way of selection. Para 215(f)(i) states that

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the assessment of vacancies for selection posts within the cadre will include the existing vacancies and those anticipated during the course of next one year plus 20% of the anticipated vacancies for ~~unfor~~ unforeseen contingencies in regard to the selection in the organisations other than construction organisation. The total number of vacancies assessed for the selection of Chief Clerks at the relevant selection was fixed at 12. Para 215(e) lays down that the eligible staff upto three times the number of staff to be empanelled will be called for written and/or viva voce test. As 10 vacancies were notified for the O/Cs and two vacancies were notified for S/Cs, 30 O/c candidates and 6 S/C candidates were alerted for the said selection. But in view of the interim order in O.A. 134/90, only 10 O/C candidates were empanelled as the S/C candidates exhausted the quota of 15% in the cadre of Chief Clerk. In pursuance of the directions in O.A. 501/90 and 551/91 the remaining two vacancies were filled by empanelling two O/C candidates.

5. Para 224.I envisages refusal of promotion by an empanelled candidate for the selection post. Para 224.I ~~which~~ is relevant for consideration of this O.A. and it is convenient to read the same which is as under:

"224. REFUSAL OF PROMOTION:

I. Selection posts

(i) The employee refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected,) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection.

E(NG) I-64-PM 1-66 dt.21-1-65 &
E(NG) I-71 PM 1-106 dt.15-12-71.

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(ii) at the end of one year if the employee again refused promotion at the outstation, his name may be deleted from the panel, deletion being automatic requiring no approval from any authority and the administration may transfer him to out-station in the same grade. He will also have to appear again in the selection notwithstanding the fact that he in the meantime, has officiated non-fortuitously against short term vacancy based on his panel position.

(iii) Seniority will be as from the date of effect of promotion and he will be junior to all the persons promoted earlier than him from the same panel irrespective of his panel position. He will not, however, lose seniority to another employee promoted to the same promotion category during the one year period of penalty as a result of a fresh selection subsequently held. "

E(NG) I-66 SR-6/41 dt.14-10-66.

It is manifest from the above that in case of refusal of promotion for selection posts, he is debarred for future promotion for one year only, and his promotion after one year will be subject to continued validity of the panel in which he is borne and if no vacancy arises after the promotion for one year but before the expiry of the panel, he will have to appear again in the selection. The validity of the panel is for two years from the date of approval by the competent authority or till the same is exhausted whichever is earlier as can be seen from para 220, sub-para (a). It is thus clear that if the vacancy existed by the expiry of ~~the~~ one year from the date of refusal of promotion or if it has arisen by the date of expiry of the currency of the panel, the promotee who refused earlier, has to be given promotion without again subjecting him for selection. On such promotion, he has to be placed below those who were promoted from out of the same panel and above those who were promoted on the basis of the next panel if such a panel was prepared before he was given promotion.

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But if at the end of one year the employee again refused promotion, his name has to be deleted from the panel without requiring any further approval from any authority and he has to be again subjected to selection for consideration for promotion.

6. Thus it is clear that the name of the empanelled candidate cannot be deleted for one year from the date of the first refusal of promotion. If within the period of said one year some more vacancies had arisen and if no one else in the earlier panel was available, ~~for~~ selection for those vacancies can be resorted to. But the vacancy which was not filled up due to the refusal of promotion by the empanelled candidate cannot be taken into consideration for assessing the vacancies for the next selection within that one year as the said candidate may opt for promotion after the expiry of one year. [redacted]

7. If the empanelled candidate refused promotion again after the expiry of one year, his name has to be ^{and} deleted from the panel if by then there is no other candidate in the panel, it has to be held that the said panel stands exhausted on deletion of the name of the empanelled candidate. Thus there will not be any question of adding another candidate to the panel ^{deleted} ~~for~~ substituting ~~for~~ candidate. So the question of filling the vacancy which was unfilled due to the refusal of promotion for the ~~semond~~ second time by the empanelled candidate does not arise by adding another candidate to the panel and it has to be taken into consideration for assessing the vacancies for selection after the date of such refusal.

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8. As the number of candidates to be alerted is thrice the number of candidates to be empanelled as stipulated by para 215(e), the number to be empanelled cannot be increased. When the name of the empanelled candidate cannot be deleted for one year from the date of refusal of promotion and as the number to be empanelled cannot be increased, the candidate next to the candidate empanelled cannot claim that he should be promoted for the vacancy which was unfilled ~~and~~ due to the refusal of promotion by the empanelled candidate. The only alternative for the management is to fill that vacancy by way of adhoc arrangement and such adhoc appointee has to be replaced by regular appointee.

9. It was already noticed that para 224.I(iii) envisages that there can be fresh selection even before the expiry of one year from the date of refusal of promotion by the candidate empanelled at the time of earlier selection. If such a vacancy was filled by way of adhoc promotion, such adhoc promotee also has to be considered for the next selection if he ~~there~~ will be within the zone of consideration for that later selection.

10. In order to assess the number ^{of} vacancies for promotion by way of selection, 20% of the ~~xxxxxxxxxxxxxxxxxxxx~~ ~~xxx~~ vacancies anticipated ~~during~~ one year have to be added for assessing the vacancies for selection for promotion by way of selection. It may so happen

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To

1. The Chief Personnel Officer, S.C.Rly,
Railnilayam, Secunderabad.
2. The Controller of Stores, S.C.Rly,
Railnilayam, Secunderabad.
3. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
4. One copy to Mr.V.Bhimanna, SC for Rlys. CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

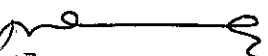
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that no unforeseen vacancy ^{might have} ~~may~~ arise during that one year and hence there may not be any vacancy on expiry of one year from the date of refusal of promotion by the empanelled candidate. But if the vacancy arises after the expiry of one year referred to and before the expiry of two years from the date of approval of the panel by the competent authority, the empanelled candidate who refused promotion has to be offered promotion for the said vacancy and if he accepts he has to be promoted without subjecting him for fresh selection. Of course if he rejects again, his name has to be deleted from the panel and as already observed the said panel stands exhausted on the basis of the said deletion if no one else in the panel is still available. Hence on an analysis of para 224.I while reading with paras 215 and 220 it can be stated that the candidate next to the last candidate in the panel has no right for promotion to the vacancy which ^{was} ~~had~~ remained unfilled due to refusal of the empanelled candidate even for the second time, and that vacancy has to be considered alongwith other vacancies for assessment of the vacancies for selection ~~para 220~~ next to the date of such second refusal.

11. Shri I.N.Mony was empanelled as the 11th candidate. ^{because} Merdly he was posted in the place to which Sri Srinivasulu has not gone due to refusal of promotion as Chief Clerk, it cannot be stated that Shri I.S.Mony was empanelled as the 10th candidate. The said contention for the applicant is not tenable.

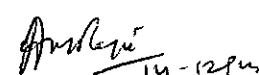
12. In the result the O.A. is dismissed. No costs./


(R. Rangarajan)
Member/Admn.


(V. Neeladri Rao)
Vice-Chairman

Dated:

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Deputy Registrar (JCC)

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRINAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN : M(ADMIN)

DATED: 5-12-1994

~~ORDER~~ JUDGEMTN:

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

in

O.A.No.

919/91.

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

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