

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA 938/91.

Dt. of Order:11-2-94.

I.Venkateswara Rao

....Applicant

Vs.

1. The Railway Board,
rep. by its Chairman,
Rail Bhavan, New Delhi-110 001.
2. The General Manager,
SC Rlys, Rail Nilayam,
Sec'bad.
3. The Divisional Railway Manager,
SC Rlys, Vijayawada-520 001.

....Respondents

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

Counsel for the Respondents : Shri V.Bhimanna, SC for Rlys

CORAM:

THE HON'BLE JUSTICE ~~SHRI V.NEELA DR. I RAO~~ : VICE-CHAIRMAN

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

....2.

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O.A.No.938/91.

Date: 11.2.1984

JUDGMENT

As per Hon'ble Sri R.Rangarajan, Member(Administrative) [

Applicant, belonging to the reserved community (Scheduled Caste), presently working in Group 'B' service of Operating Department of South Central Railway, joined the Railway Service in 1960 as Trains Clerk. In 1964, he was selected as Traffic Apprentice and in due course he was promoted as Station Master in 1974. In 1977, he was called for selection for the post of Traffic Inspector/ Station Master/Chief Yard Master in the grade of Rs.700-900. He was selected in the above said selection and empanelled in the panel published on 21.2.1977. The applicant thereafter was posted as Chief Yard Master on 23.6.1977 in the scale of Rs.700-900. However, later on it was reported that he was ineligible to be empanelled for the grade of Rs.700-900 in the panel published on 21.2.1977 and hence his name was deleted from the panel on 28.6.1980 which was challenged by the applicant in the Writ Petition bearing W.P.No.5142/83 in the High Court of Andhra Pradesh. The said Writ Petition was transferred to this Tribunal and numbered as T.A.No.104/86. The Tribunal held in its judgment dt. 8.9.1986 "that the deletion of the applicant's name in the final panel dt. 28.6.1980 was arbitrary and directed that he should be restored to the original position assigned to him in the panel of 1977 with all consequential benefits."

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2. In pursuance to the judgment in T.A.No.104/86 the Chief Personnel Officer, South Central Railway by his letter No.P.T./605/Optg./Vol.I dt. 5.1.1987 advised the Divisional Railway Manager (Personnel), Vijayawada to restore his position in the panel published on 21.2.77. His name was placed in the above panel for promotion to the grade of Rs.700-900 (R.S.) above one Shri D.Ramulu and below one Shri V.B.Khadtare. The applicant had subsequently represented for his promotion to Group 'B' service because of his revised seniority position in his representation dt. 3.2.1987. His representation was examined and he was advised "to appear in the ensuing selection immediately after the date of judgment in T.A. No.104/86 and in case he is successful in the first attempt, his name would be interpolated in the appropriate place in the select panel of 1981 duly extending the proforma promotion and fixation of pay" by letter No. P/GAZ/607/Optg./86-87 dt. 18.11.1987 of the Chief Personnel Officer, South Central Railway.

3. The applicant appeared for selection conducted in the year 1988 for Group 'B' service in Operating department, but failed in the written examination. In 1989, there was another selection and the applicant though qualified in the written test could not be successful in the viva-voce and hence he was not empanelled. In the 1990 selection, the applicant had qualified both in written and viva voce and hence ^{was} empanelled and posted in Group 'B' post in the operating Branch in terms of Office Order No.675/GAZ/T.C./VI dt. 19.12.1990.



(A.B)

As he was not empanelled in 1981 examination panel as he qualified for the Group 'B' service only in the third attempt he has filed this O.A. for a direction to promote him to Group 'B' post on adhoc basis with effect from 11.8.1980 along with his juniors and regularise his services in Group 'B' post from the date his junior was regularised in 1981 selection panel. He further prays for a declaration that the selections held in respect of the applicant in 1988, 89 and 90 ^{and} is not in conformity with the rules in vogue regarding promotion of employees overlooked due to administrative error as the applicant was arbitrarily forced to appear for a selection in respect of the vacancies that arose subsequent to 1981 and not the vacancies as existed prior to 1981 against ^{alone} which the applicant ~~above~~ should have been considered by giving him deemed promotion and other consequential benefits.

4. Respondents contend in their reply affidavit that the applicant failed to qualify in the written examination held in the year 1988, the first examination which was conducted immediately after the date of the Judgment in T.A.No.104/86, which will be considered as an ~~extension~~ examination of 1981 as far as the applicant is concerned and hence his name cannot be interpolated in the selection held in the year 1981 as per the revised seniority.

5. We have heard Sri G.V.Subba Rao, learned counsel for the applicant and Sri V.Bhimanna, learned Standing counsel for respondents.

6. The main contentions of the applicant are two fold. They are -

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(i) That the letter of the Chief Personnel Officer dt. 18.11.1987 bearing No.P/GAZ/607/Optg/86-87 is arbitrary in stating that "he will be empanelled and his name interpolated at the appropriate place duly extending the proforma promotion if he comes out successful in the first attempt" after the judgment in T.A.No. 104/86. His argument is that the above said judgment does not indicate anything about passing of the examination in the first attempt.

(ii) That he should be empanelled and interpolated in the appropriate place even if he does not qualify in the first attempt after the judgment in T.A.No.104/86 as his name was deleted erroneously from the panel of 1977. For this contention the applicant relies on para-228 of Indian Railway Establishment Manual, Vol.I.

From the above contentions of the respondents and the applicant, the main issues that arise for adjudication are -

(i) Whether the name of the applicant can be interpolated in 1981 panel of Group 'B' Officers as per his revised seniority as per judgment in T.A.No.104/86 even if he failed in the first attempt and qualified and selected in subsequent examination?

(ii) Whether the applicant is entitled for empanelment in the 1981 panel on the relaxed standards as he belongs to the reserved community in case he is not qualified as per normal standards in the first examination held in 1988 immediately after pronouncement of the Judgment in T.A.No. 104/86?

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7. The above points were considered by us thoroughly. As regards the first issue, the learned counsel for the applicant contended that as the Judgment in T.A.No.104/86 is silent about passing of examination for interpolating the applicant's name in 1981 panel his name should be interpolated even if he fails in the first attempt, ^{but} and qualify in subsequent attempts for promotion to Group 'B' service, as it was an administrative error in fixing his seniority which was corrected subsequently.

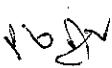
8. The learned counsel for the applicant relies on para-228 of Indian Railway Establishment Manual, Vol.I and on the following Judgments of Supreme Court/Tribunals reported in -

- (i) 1985(1) SLR 500 - Arun Kumar Chatterjee Vs. South Eastern Railway and others.
- (ii) ATR 1986 CAT 293 - Shri S.D.Agnihotri Vs. Union of India.
- (iii) 1992(1) ^{SLT} CAT 484 SDJ - Ramesh Chander Vs. R.S.Gahlewat
- (iv) ATR 1987(2) CAT 347- K.B.Vaidya Vs. Union of India and others.

9. Para-228 of Indian Railway Establishment Manual talks about empanelment of a candidate due to administrative error overlooked for promotion earlier but does not indicate whether he can be empanelled in the earlier panel if he fails to qualify in the first attempt but qualifies in the subsequent attempt. The relevant para is quoted below:

"228. Erroneous promotions:

- (I) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not



(98)

being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:-

- (i) where a person has not been promoted at all because of administrative error, and
- (ii) where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

The above quoted para of I.R.E.M. only states that if an employee is overlooked for promotion due to administrative errors he should be given such a position as due to him after correction of the error and other consequential benefits. The respondents have submitted in their reply affidavit that he would have been interpolated in the 1981 panel if he had passed the examination conducted for Group 'B' service in the year 1988 which was conducted immediately after the pronouncement of the judgment in T.A.No.104/86. The essence of this Manual para has to be taken only in the light of the above submission of the respondents and cannot be read in any other manner.

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10. The rulings of Supreme Court/Tribunal quoted by the respondents to support their above contentions are examined.

(a) In [1985(1) SLR 500 - Arun Kumar Chatterjee Vs. South Eastern Railway and others] the applicant therein came on inter-Railway transfer as per Rule-312 of I.R.E.M. He had questioned his seniority position in this case in the new unit. There is no indication in the judgment to the effect that the applicant therein was to be given proforma position in the earlier panel due to correction of seniority position subsequently eventhough he had passed selection in the second or third time. Hence this case is not in support of the contention of the applicant.

(b) In the Judgment reported in [ATR 1986 CAT 293 - Shri S.D.Agnihotri vs. UOI] there is no clue to come to a conclusion that the proforma promotion was given to the applicant therein in the earlier panel due to correction of administrative error eventhough he failed to qualify in the first instance but qualified in subsequent attempts. Hence this case is also not in support of the contention of the applicant.

(c) In the Judgment [^{SLT} 1992(1)(CAT) 484 - Ramesh Chander Vs. R.S.Gahlewat] the subject pertaining to payment of arrears from the date of notional promotion of the applicant was discussed. This case has no bearing to the present one and does not provide any answer to issue No.1 supra.

(d) In ATR 1987(2) 347 - K.B.Vaidya Vs. UOI and Ors., the Review selection committee considered the promotion of the applicant therein who was left out earlier due to administrative error and found him fit in the first instance itself for regularisation from an earlier date. Therefore, this judgment has no application to the present case.

So, none of the citations and the provision in the I.R.E.M. cited by the applicant give us any clue to arrive at an answer to the issue.

11. Hence, a ruling has to be given whether passing in the first examination immediately after the Judgment in T.A.No.104/86 alone will give the applicant the right to be placed in the 1981 panel or passing in the subsequent selection also will give him that right. Promotion to the Group 'B' service is by way of selection. The applicant has to be necessarily subjected to the selection before he is being empanelled for promotion to Group 'B'. As his seniority was revised due to the judgment in T.A.No.104/86 he was entitled for appearing for the examination in 1981 itself. There were no other selections in between the years 1981 and 1988. The first selection that was conducted immediately after the revision of seniority after the judgment in T.A.No.104/86, and the next selection held after 1981 was in the year 1988. This examination for all practical purposes should be considered as an extension examination to the 1981 examination as far as the applicant is concerned. It is to be inferred that passing of the selection by the applicant held in 1988 will be deemed as if he has passed the extension examination of 1981. Failing in the examination held in 1988 has to be inferred that he has failed to qualify in the 1981 selection. Passing in the examination held in 1988 will only give him the right to be empanelled in the 1981 list. If this examination held in 1988 is not considered as an extension examination of 1981 selection and if he can be interpolated in 1981 selection even if he passes in the selection held subsequent to 1988 examination, he will be given an unintended benefit of superseding the candidates passed in the selection held in 1988 and subsequent examinations. Hence, it is to be held that the passing of the examination conducted immediately after the revision of seniority in pursuance

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of the judgment in T.A.No.104/86 will only give him the status to be empanelled in the 1981 panel. The applicant has not brought to our notice any rule contrary to our above observation. As stated above, the citations and the para-228 of IREM do not come to his rescue to prove his contentions. Hence we have no doubt in our mind to accept the contention of the respondents that the applicant cannot be empanelled in the 1981 list as he failed to qualify in the first attempt after the revision of his seniority.

12. The second issue that arises is in regard to the empanelment of the applicant in 1981 list even if he failed to come up to the normal standard in the 1988 selection as he belongs to reserved (S.C.) community. The respondents rely on the Railway Board circular dt. 15.4.1982 bearing No. B1-E(SCT)15/26 for the purpose of promoting him under the relaxed standard. The respondents do agree that relaxation in the standard is permitted to a Reserved Community candidate in a selection if adequate candidates from the reserved community are not available to fill the Roster points. The above circular dated 15.4.1982 gives the method of filling up roster points under relaxed standard. As per this scheme adhoc promotion of SC/ST candidates for 6 months on trial basis is permissible and such candidates to be appointed on trial basis are the best among the failed reserved community candidates in that examination. If they ^{acquit} acquaint themselves well by their performance in the trial period, they will be included in the panel and will be posted to the commercial department.

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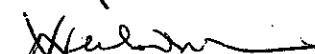
13. The applicant contended that he got 76 marks in the professional paper and 19 marks in Accounts and Establishment paper in the 1988 selection and thus he qualified under normal standard. Even if he has not qualified in the normal standard he has to be promoted under relaxed standard as per the above circular being an S.C. community candidate and empanelled in the 1981 selection as enough SC candidates are not empanelled in 1981 selection. The respondents on the other hand submitted that the applicant got only 73 marks in professional subject and 16 marks in Accounts and Establishment paper. Thus he failed to come up to the normal standard and his case cannot also be considered under relaxed standard as there were enough SC community candidates selected under normal standard in the 1981 selection to consume the roster points. In view of the above conflicting stands taken by them, we called for the records and perused the selection proceedings. As per the proceedings applicant had secured only 73 marks in professional subject and 16 marks in Accounts and Establishment paper making a total of 89 marks out of 150 marks and hence he failed to come up to the normal standard for qualifying in the examination. It is also seen that in the 75% vacancies quota of selection list published in July, 1981 there are 17 SC candidates who qualified under normal standards against the requirement of 9 candidates to fulfil the reservation quota. Thus even under relaxed standard he cannot be empanelled as there was over representation of SC community candidates in the 1981 panel as can be seen from the list bearing No.P/GAZ/607/TC/Pt.IV dt. 7.9.1981. Thus the second question ^{has} also to be negatived.

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14. In view of what is stated above, we conclude that the applicant was at no time placed in any disadvantageous position and his rights for promotion were never denied. As the applicant failed to fulfil the pre-requisite of passing the selection examination for Group 'B' service in the first instance, he could not be empanelled in the 1981 selection list. Hence, the question of giving him consequential benefits of promotion also does not arise.

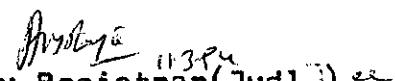
15. In the result, the O.A. is liable only to be dismissed and accordingly we do so. No order as to costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice-Chairman

Dated 16th February, 1994.

Grh.


Deputy Registrar (Judicial)

Copy to:-

1. The Chairman, Railway Board, Rail Bhavan, New Delhi-001.
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P. V. Devaraj
10/3/94