

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1140/91

Date of Order: 29.10.93

A.Chaya Devi .. Applicant

Vs.

1. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad.
3. Senior Hindi Officer-I,
South Central Railway,
Rail Nilayam,
Secunderabad.
4. Sri Harinath Sarade,
Hindi Assistant, Grade I
Divisional Railway Manager's Office,
South Central Railway,
Guntakal.
5. Smt. Kamala Mohan,
Hindi Assistant Grade-I,
Div. Rly Manager's Office,
S.C.Railway,
Guntakal.
6. Smt. P. Rajya Lakshmi,
Hindi Assistant, Grade-I,
Chief Project Manager's office,
(Railway Electrification)
South Central Railway,
Vijayawada. .. Respondents

Counsel for the Applicants : Mr. P. Krishna Reddy

Counsel for the Respondents : Mr. N. R. Devaraj

CORAM:

THE HON'BLE JUSTICE MR. V. NEE LADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN : MEMBER (ADMM.)

(3)

O.A.NO.1140/91

JUDGMENT

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE)).

The applicant, Ms. A.Chaya Devi, joined Railways as Hindi Assistant Grade-II in the pay scale of Rs.1400-2300 on 13.2.1985 and posted to Vijayawada Division of South Central Railway. While she was working as such in Vijayawada Division, the 4th and 5th respondents were promoted to the higher grade of Rs.1600-2660 by the Office Order dated 4.8.89 ~~and~~ on the basis of seniority-cum-fitness. The fitness was adjudged on the basis of the Annual Confidential Reports (ACRs) maintained for the applicant as well as the respondents 4 and 5. The case of the applicant was also considered but she was not found fit on the basis of the ACRs. Thereafter, she went on deputation on her own as Degree Teacher to Navodaya Vidyalaya Samithi, West Marredpally, Secunderabad on 24.10.1989 and she returned back to the parent cadre of the Railways on 2.7.1991. On her return, she was posted as Hindi Teacher Grade-II at Kazipet as there was no suitable vacancy for her to accommodate at Vijayawada. After she joined, the applicant and the 6th respondent were also considered for promotion to the grade of Hindi Assistant Grade-I in the pay scale of Rs.1600-2660 but she was once again overlooked on the basis of her ACRs. The 6th respondent was promoted to the grade on 29.10.1991. She represented against the supersession a number of times but her case was rejected on the plea that she was not found fit for promotion to the higher grade on the basis of ACRs.

2. A notification was issued for promotion to the grade of Assistant Hindi Officer and the 4th ~~respondent~~ ~~was~~ alerted to be ready for written examination as stand-by

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whereas the applicant was not considered as she was in the lower grade of Hindi Teacher Grade-II in the pay scale of Rs.1400-2660. Aggrieved by the above, she has approached this Tribunal for a direction to the respondents 1 to 3 to permit her to attend the written examination scheduled to be held on 16.12.1991 for the Post of Hindi Superintendent by promoting her as Hindi Assistant Grade-I from the date of her juniors viz., 4th and 5th respondents were promoted as Hindi Assistant Grade-I and give the applicant the seniority, arrears of salary and all the consequential benefits/reliefs.

3. Heard the learned counsel for the applicant Shri P. Krishna Reddy and the learned Standing Counsel for the respondents, Shri N.R. Devaraj.

4. For the applicant, it is stated that there is no need to maintain ACRs for the applicant as she was in the grade of Rs.1400-2660 and the next selection post. Master Circular dated 9.12.1991 (No.28/91) of the DRM(P)/BG/SC lays down as ~~followed~~ under:-

"3. The report should be written annually on every Railway servant, except those mentioned below, in the form prescribed for the purpose, generally for the period ending with the financial year, appraising the performance, character conduct and qualities of the concerned Railway servant:-

(a) xxxxxxxxx | xxxxxxxxx xxxxxxxxx
(b) xxxxxxxxx | xxxxxxxxx xxxxxxxxx

(c) Group 'C' Railway servants whose initial grade is higher than the grade of Rs.950-1500 (RPS) provided the next higher grade for them is a non-selection grade, except in the case of Skilled Gr.I & II. Artisans staff for whom

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Confidential Reports shall be written for those in two grades below the selection grade.

(Ref: Board's letters No.E(NG)67/CR3/2, dated 23/10/67, E(NG)IY81CR/5, dated 26.9.91)"

As per this circular, ^{for} the Group 'C' Railway servants who have been appointed in the grade higher than the grade of Rs.950-1500, ACRs ~~need~~ ^{not} be maintained where the next higher scale for them is a non-selection grade. In this case, the next post for promotion for the applicant is in the grade of Rs.1600-2660 which is a non-selection post. Hence, ACRs need not be maintained for the applicant. The applicant contends that her promotion is governed by Para 214(a) of the Indian Railway Establishment Manual which reads as under:-

"Non-selection posts will be filled by promotion of the senior most suitable Railway servant. Suitability whether an individual or a group of Railway servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests if necessary. A senior Railway servant may ~~not~~ be passed over only if he/she has been declared unfit for holding the post in question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the Railway servant is being considered."

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5. The respondents relied on the circular No.Hindi-76/G-32/6, dt. 15.9.1979 of the Ministry of Railways (Railway Board) and the relevant portion on which the respondents relied upon is as under:-

(c) Non-gazetted employees engaged in Hindi work in the Headquarter office of the Zonal Railways/Production Units.

The Confidential Reports of the employees in Zonal Railways will be initiated by the Hindi Supdt./Assistant Hindi Officer (Class-II) concerned, connection with the working of employees and submitted to Hindi Officer concerned dealing with the work, for his review. After review, the Hindi Officer will submit the confidential reports to Mukhya Rajbhasha Adhikari for counter-signature/acceptance. Where the Hindi Superintendents initiate the confidential reports of certain categories of non-gazetted employees of the Hindi Department, the same will be put up to the Assistant Hindi Officer (Class-II) concerned dealing with the working of the employees, who will in turn submit the same to Hindi Officer (Class-I) concerned for his review before the same are put up to Mukhya Rajbhasha Adhikari."

In the Railway Board's letter dt. 26/30.9.1981 (No.E(NG)1/81/CR/5), it has been clearly stated that the instructions in the circular will supplement the earlier instructions issued and whenever there are contradictions between the earlier orders and the present one, the present one is taken to be in supersession of the earlier orders. Thus the circular relied upon by the respondents is superseded by a letter of Railway Board dt. 26/30.9.1981 and this circular clearly states that the ACRs need not be maintained for those who are in initial cadre of Rs.950-1500 and above, if the next promotion is by way of non-selection. Hence, there is no need to further advert to the circular dt. 15.9.1979 for disposal of this O.A.

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6. The respondents also relied on the Railway Board's Circular No.E/NG/I/86/CR/8, dated 22.4.1987 to state that it is necessary to maintain ACRs in Hindi Section for the grade of Rs.1400-2660 even though the next higher grade is non-selection post. The portion relied upon for the respondents is as under:-

"It has also been decided that confidential reports for railway employees in grade of Rs.330-560 (RS)/Rs.1200-2040(RSRP)(New scale) should be written in a simplified proforma enclosed as Annexure-V".

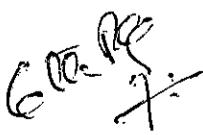
This circular does not indicate that it is necessary to write ACRs even in cases where ACRs need not be written as per the letter dt. 26/30.9.1981. It merely suggests the officer who has to initiate ACRs should initiate the same in the proper format. Thus, even this said circular does not support the contentions for the respondents that it is necessary to write ACRs if the initial scale is Rs.950-1500 and above in cases where the next promotion is by way of non-selection.

7. As the ACRs cannot be written in regard to the applicant as her initial scale is more than Rs.950-1500 and as the next immediate promotion is by way of non-selection, the procedure adopted by the DPC in looking into the ACRs for determining suitability for promotion to the post of Hindi Assistant Gr.I, has to be held as illegal.

8. It is not in controversy that the applicant was senior to the 4th to 6th respondents in the category of Hindi



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Assistant Grade-II. When the Respondents 4 and 5 were promoted in August 1989 and when she was superseded, she merely filed an appellate petition before the concerned authority and she had not then filed any OA challenging the promotion of Respondents 4 and 5. Later, as already observed, the applicant and the 6th respondents were considered for promotion to the post of Hindi Assistant Gr.I. Then also it was found by the DPC after perusal of the ACRs that the applicant was not found suitable and the 6th respondent was promoted by the order dated 29.10.1991. This OA was filed on 12.12.1991. As the applicant had not chosen to assail the promotion of the 4th and 5th respondents before her case was again taken up for consideration for promotion in 1991, her challenge against the promotion of the Respondents 4 and 5 has to be disallowed on the ground of laches.

9. As we held that the ACRs could not be looked into for consideration for promotion to the post of Hindi Assistant Grade-I and as DPC found the applicant not suitable on the basis of the ACRs, it is necessary to direct the respondents to convene DPC to consider the case of the applicant for promotion to the post of Hindi Assistant Grade-I on the basis of the records referred to in Para 214(a) of the Indian Railway Establishment Manual other than the ACRs. If the DPC finds the ~~xxxxxx~~ applicant suitable on the basis of the records, the applicant has to be given promotion from the date on which the 6th respondent was promoted with all consequential benefits including arrears of pay etc. The question as to whether it is necessary to revert the 6th

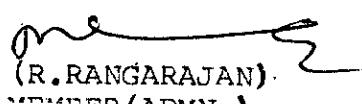
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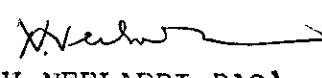
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respondent for want of vacancy, is the matter for consideration by 15.12.1993.

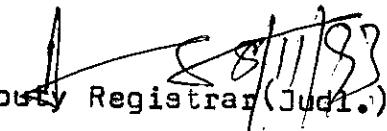
10. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 29th October, 1993.

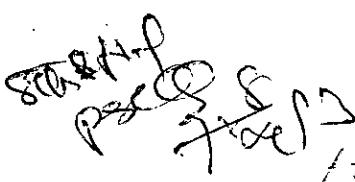
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Deputy Registrar (Judicial)

Copy to:-

1. General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
3. Senior Hindi Officer-I, South Central Railway, Railnilayam, Secunderabad.
4. One copy to Sri. P.Krishna Reddy, advocate, CAT, Hyd.
5. One copy to Sri. N.R.Devaraj, SC for Railways, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-


S. R. H.
Rsm/-
29/10/93