

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT:HYDERABAD

O.A.NO. 1029/92.

Date of Order: 19.7.95.

Between:

E. Guruswami.

... Applicant.

and

1. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly, Railnilayam, Sec'bad.
3. The Divisional Railway Manager, S.C.Rly, Divisional Office, Guntakal.
4. The Sr.Divisional Personnel Officer, S.C. Rly, Divisional Office, Guntakal.
5. The Divisional Engineer, Special works, S.C. Rly, Divisional Office, Guntakal.
6. The Asst. Engineer, Operative, S.C.Rly, Renigunta.
7. The Chief Permanent Way Inspector, S.C. Rly, Renigunta.

.... Respondents.

Counsel for the Applicant: Sri A. Bhaskara Chari.

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

CDRAM:

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

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

AS PER HON'BLE JUSTICE SRI V.NEELADRI RAO:
VICE CHAIRMAN

J U D G E M E N T

Heard both the learned counsels.

2. The applicant joined service as casual labour on 5.2.1979 and he attained temporary status in the said post on 5.6.79. He was absorbed as Gangman w.e.f. 31.12.1988. Notification dt 5.1.89 was issued calling for volunteers for selection to the post of PWM for 10 vacancies against LDCE quota. The eligibility conditions were 10 plus 2 with science and mathematics., and minimum 3 years service after regularisation. As the applicant had not completed 3 years of regular service in the post of Gangman by 5.1.1989, his case was not considered for the promotion to the post of PWM under LDCE quota.

3. There was another selection against promotion quota for which applications have been called for vide letter dt 11.9.92. The service condition for eligibility is 10 years of service in all but with minimum of 5 years regular service as Gangman. As the applicant had not completed 5 years of regular service of as Gangman and as he had put in only 3 years 8 months of regular service, his application was rejected for promotion against the promotional quota.

4. During aggrieved, the applicant filed this OA praying for declaration that the action of R4 in calling for volunteers to fill up posts of PWM earmarked to be filled up under LDCE quota and rejecting the claim of the applicant for both the quotas i.e. in LDCE and seniority quota is against law and in violation of the Board's decision dated 24.7.1964.

5. Annexure II filed along with the counter affidavit is to the effect that full temporary status service rendered by Casual Gangman followed by regularisation (in the category of Gangman) should be taken into account for the purpose of counting the minimum service of 3 years prescribed for eligibility for LDCE and the revised panel interpolating qualified Gangmen is if any on the basis of above has to be published. The panel for LDCE examination conducted in the pursuance of the notification dt 5.1.89 had not expired by the date in the letter COP dt 4.1.91 was issued. As the panel has not expired, the CPO gave instructions vide his letter dt 4.1.91 for interpolation of all those Gangmen in the revised panel without waiting the for Board's orders for further extension of LDCE procedure.

6. It is evident that if the temporary status period of the applicant as Gangman has to be taken into account as he had completed 3 years of service by 5.1.89 the date on which the notification was issued calling for volunteers for promotion to the post of PWM under 20 % LDCS quota. So it is necessary to give a direction to the Respondents to empanel the applicant, if on the basis of the performance he has to be placed above the last one empanelled in the said list. If so, empanelling the applicant has to be given the notional promotion as on that date with monetary benefits from 19.11.1992, one year prior to the filing of this O.A. But if on the basis of the performance he cannot be empanelled, this OA stands dismissed.

7. The OA is ordered accordingly. No costs.

Sd/-

HRPN.
H(A).

SD/-
HVNRJ
VC

Certified as to be true copy:

Dated:

Court Officer,
Central Administrative Tribunal
Hyderabad Bench, Hyderabad

To:

1. The General Manager, SC Rly, Secunderabad.
2. The Chief Personnel Officer, SC Rly, Railnilayam, Sec'bad
3. The Divisional Railway Manager, SC Rly, Guntakal.
4. The Sr. Divisional Personnel Officer, SC Rly,
Divisional Officer, Guntakal.
5. The Divisional Engineer, Special Works,
SC Rly, Divisional Officer, Guntakal.
6. The Asst. Engineer, Operative, SC Rly, Renigunta.
7. The Chief Permanent Way Inspector, SC Rly, Renigunta
8. Copy to A. Bhaskara Chari, Advocate, 1.3.44/1/A,
1 floor, Gulshan Hotel, Chikkadapally, Hyderabad.
9. Copy to V. Bhimanna, SC for Rlys, CAT, Hyd.
10. Copy to Library, CAT, Hyd.
11. Spare Copy.

// true copy //

D. GOVARDHANA CHARY,
M.A.M.Phil, L.L.B.,
ADVOCATE.

1.1.80/20, (2nd Floor)
RTC X Road,
HY DERABAD - 500 020.
Dated: 13-7-1996

// BY REGISTERED POST
ACKNOWLEDGEMENT DUE //

TO

1. The Divisional Railway Manager,
South Central Railways,
Divisional Office, Guntakal,
Ananthapur District.
2. The Senior Divisional
Personnel Officer,
South Central Railways,
Divisional Office, Guntakal,
Ananthapur District.

Dear Sirs,

Sub: SERVICES: E. Guruswami, Gangman - consi-
deration for P.W.Ma.Post in 25% LDCE
quota - Not considered - Application
filed before Central Administrative
Tribunal, Hyderabad, Directions issued -
Representation submitted - Rejected -
Contempt Notice issued for non-compliance -
Regarding.

Ref: 1. Judgement of the Hon'ble Administrative
Tribunal; dated 19.7.95 in C.A.NO.
1029/92.
2. My Client's representation to the
addressee No. 1, dated 3.10.1995.
3. DRN Ir. No. G/F 535/IV/PWMS, Vol.III,
dated 21.11.95.

Under the instructions of my client Sri E. Guru
Swami, presently working as Gangman in the office of the
Chief Permanent Way Inspector, South Central Railways,
Renigunta, the present contempt notice is issued.

1. It is represented that my client was initially
appointed as an Extra Labour Khalasi on 5.2.1979 and
was elected to the status of temporary service on 5.6.1979.
Later on, his services were regularised as Gangman with
effect from 31.12.1988. There after, he aspired for the post
of permanent way mastery (PWMS) and he fulfilled the requisite
conditions. In fact, when the volunteers were called for
to fill up the posts of PWMS and LDCE quota on 3.1.1989,
my client desired to be considered. But his request was

rejected on the pleas that he did not put in a regular service of 3 years. And later on, on the second time when the volunteers were called for by the Divisional Office, vide its Circular No;G/P 608/IV/PWMS/ (25% of LDCE) dated 18.7.90 wherein the total vacancies were indicated is 10% of which O.C.-7, S.C.-2, and S.T.-1. The last date for receipt of applications was shown as on or before 6.1.1990 and the candidature of my client along with 5 others was forwarded by the Chief Permanent Way Inspector, through his proceedings CPWI/HU/4, dated 4.8.90 along with a statement of the services particulars of the staff working under him where my client's name was figured at serial No.1. But my client was not considered once again on the same pleas that he did not put in regular service of 3 years as Gangman.

2. It is submitted that my client also being eligible under 50 % promotional quota staked claim for consideration of his candidature. But the request of my client was rejected on the plea that the minimum of 5 years of service in the post of Gangman is not fulfilled.

3. It is represented that when the candidature of my client was rejected both for the 25% LDCE quota and the 50 % of Promotion Quota, my client filed the O.A. No. 1029/92 before the Hon'ble Central Administrative Tribunal at Hyderabad seeking the relief of consideration of his case to the post of PWMS under LDCE quota and an interim direction was also issued to the respondents including the applicant, i.e. my client. But his candidature was not considered on the plea that the examination for the LDCE quota was already conducted. However, my client was considered for the 50 % Promotional Quota, but was not promoted on the plea that he did not put in 5 years service as required under the rules.

4. It is represented that the respondents i.e. the addressee No.2 herein filed counter on behalf of all the respondents therein and the main plea in their counter affidavit was that in view of the Railway Board's letter dated 19.8.66 my client's case could not be considered either under the quota of IDCR or under 50% Promotional Quota as he did not put in regular service of 3 years ~~every year~~ / 5 years. It was also contended in the said counter, inter alia, that the Board's letter dated 25.7.1964 has no relevance, without explaining how that did not have relevance, more so when the Railway Board did not refer the letter dated 25.7.64 nor did it say that the letter dated 25.7.64 is superseded.

5. Above all, the Railway Board's letter dated 25.7.1964 is clarificatory in nature as to what service should be taken into consideration for promotion from Class IV to Class II. The said letter unambiguously clarified that the "The Board have decided that all continuous temporary cadre services preceeding permanent absorption in the regular cadre may be counted in reckoning the 5 years qualifying service in such cases." The letter itself is clear that it is for the purpose of computing the regular services. The continuous temporary services also should be taken into consideration. Whereas, in the instant case my client who was elevated to the status of the temporary services on 5.6.79 in the post of the Gangman, continued in the said post uninterruptedly till 31.12.1988 when his services were regularised. Therefore, my client's services in the post of the Gangman for the purpose of PMS post should be reckoned with effect from 5.6.79 in which event

he would be putting more than 3/5 years regular service entitling him to be considered both for 25% LDCE / 50% promotional quota.

6. It is represented that amusingly, enough, the counter affidavit takes an excuse that the C.P.O's instructions issued in his letter dated 21.1.91 were in receipt by the Divisional Office, subsequently to the finalisation of the election for LDCEs and in view of the Board's letter dated 19.8.1988, the consideration for 25% of vacancies would be from 1.10.1988 to 30.9.90 only. This plea in the counter affidavit failed to take into the Divisional Officer letter No. G/P 608/IV/PWMS. (25% LDCE) dated 18.7.90 wherein 10 vacancies were shown as vacant of which 7 posts were for O.C.S. It is reliable learnt and understood that the said vacancies were ~~shown as vacant~~ not filled up and were transferred to the Promotional Quota, when candidates like my client were available for consideration for LDCE quota. Even otherwise, a cursory look at the C.P.O's letter goes to show that those who have 3 years service including the temporary service, must be considered by way of review interpolating such candidates whose performance is better than those who were already selected. For inexplicable reasons, a stand is taken that the C.P.O's letter is subsequent, ignoring the fact that the selections already made prior to 30.9.1990 could be reviewed.

7. It is represented that after considering the counter affidavit filed by the respondents and on hearing the arguments of both the counsel of either side, the Hon'ble Tribunal in its judgement, while disposing the application held that the temporary status period of the applicant as Gangman has to be taken into account, as he had completed 3 years of service by 5.1.1989., the date on which the notification was issued calling for volunteers for promotion to the post of PWMS under 25 % LDCE quota

(inadvertently shown as 20 %). So, it is necessary to give a direction to the respondents to empanel the applicant, if on the basis of the performance he has to be placed above the last one empaneled in the said list. If so empaneled the applicant has to be given notional promotion as on that day with monetary benefits from 19.11.1991, one year prior to the filing of the O.A.

8. If this part of the judgement is read in consonance with the C.P.O.'s letter dated 4.1.91, my client would have come up for consideration made 25 % LDCE quota and all other consequential benefits would have followed. But these addressees herein seemed to have drawn sustenance from the last part of the judgement i.e. 'but if on the basis of the performance he can not be empanelled. This O.A. stands dismissed.' That is to say that my client performance is to be assessed first. And that assessment could be done only when he is subjected to a test under 25 % quota LDCE, but not otherwise.

9. It is represented that after receipt of the judgement, my client submitted his representation to the addressees no. * on 3.10.95 to give him to the benefit of the judgment. Unfortunately, neither the direction in the judgement, nor the representation of my client were considered and simply the letter under the third reference was issued informing my client that his performance has not been considered against LDCE quota. The question of considering performance does not arise unless my client's is subjected to a test, treating that he has put in the requisite regular service of 3 years. But no test is conducted. Unless and until the test is conducted, assessing of performance does not arise. And above all the third reference letter subject refers 50 % LDCE quota whereas the 50% is Promotional Quota but not LDCE quota. Whereas the body of the letter says that he is not considered under LDCE quota. This discrepancy could best be explained by the author himself. But the fact

remains that my clients's candidature is not considered in accordance with the judgement and in accordance with the C.P.O's letter dated 4.1.91. And this action of the addressees herein tantamounts to non-compliance of the judgement, wherether it is wilful or otherwise.

10. Accordingly, the addressees herein advised to comply w th the Tribunal's judgement dated 19.7.96 by appointing my client to the post of PWMS under 25% EDCS quota and give all the benefits that arise out of such promotion with effect from 19.11.91, within one week from the date of receipt of this notice, failing which my client would be constrained to initiate the contempt proceedings for compliance of judgement dated 19.7.95 passed in O.A. No. 1029/92 holding the addressees herein responsible for the costs and consequences that follows thereon.

Sd/-

(D. GOVARDHANA CHARY)

Copy to the Chief Personnel Officer, South Central Railways, Rail Nilayam, Secunderabad for favour of of information and necessary action with reference to his letter No. (P) (E) / 268/PWT/ Vol.II, dt 4.1.91.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD
BRANCH: HYDERABAD

C
A.No. /96

in

O.A.No.1029/92

Between:

E.Guruswami : Applicant

and

Sr. Divl.
Personnel Officer,
SOR, Gantakal and
another : Respondents

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Filed on:

Filed by:

Sri D.Goverdhan Chary,
Sri Hargopal,
Advocates,
1-1-80/20, 2nd floor,
Mushirabad, Hyderabad.

