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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A.1039/92.

Dt. of Decision : 21-3-95.

M. Ramjayaram

.. Applicant.

vs

1. The General Manager, SC Rly,
(rep. by Union of India),
Rail Nilayam, Secunderabad-371.
2. The Chief Personnel Officer,
SC Rly, Rail Nilayam,
Secunderabad-371.
3. Sri C. Mahaboob Basha
4. Sri V. Rama Mohan Rao
5. Sri M. Govinda Charyulu

.. Respondents.

Counsel for the Applicant : Mr. C. Suryanarayana

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

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

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

JUDGEMENT

(As per Shri Justice V.Neeladri Rao, Vice-Chairman)

This O.A. was filed praying for direction to the respondents to revise the selections on the basis of the marks secured by the candidates by arranging their seniority according to their marks in the written test and to appoint the candidates in that order of seniority, without adding any seniority marks or notional seniority marks at any stage of the selections and limiting the total marks in the viva voce and personality tests as per the Supreme Court dicta. It is alternatively prayed for direction to the respondents to appoint the applicant in the vacant post or atleast against the future vacancy granting him all consequential benefits including protection of seniority according to his rank in the written test and for payment of wages as Law Assistant from the date his junior was appointed as such Law Assistant declaring him as absorbed from such date.

2. The facts which gave rise to this O.A. are as under:

3. 66 2/3rd per cent of the posts of Law Assistants have to be filled up from amongst the serving employees of the Railways who are in the scale of Rs.1600-2660 and below and who are graduates in law and who have completed not less than five years continuous service in the railways as on the cut off date.

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4. On 7-1-1991 notification was issued calling for applications from the eligible serving railway employees for the post of Law Assistant in the scale of Rs.1600-2660 to fill up five vacancies, that is, 3 OCs, one SC and one ST. It further stated that the applicants have to complete five years of continuous service in the railways as on 1-1-91.

5. In pursuance of the said notification, the applicant and Respondents 3 to 5 herein and 60 others applied for the same. The written test was conducted on 8-6-91. It was notified by letter dated 19-6-91 that only eight including the applicant and Respondents 3 to 5 herein got the minimum qualifying marks i.e. 60 per cent, and they were called for *viva voce*. After *viva voce*, Respondents 3 to 5 herein who were shown at Serial Nos.1 to 3 in the panel were selected as per panel published on 21-11-91. The appointment orders were issued on 10-12-91 and R.3 to R.5 joined as Law Assistants in December 1991/January 1992. This O.A. was filed on 23-11-92.

6. The applicant joined service in the railways as Junior Clerk on 4-2-81. He obtained law degree in 1985. He was promoted as Senior Clerk in 1988 and he was in the same cadre by the date he applied for the post of Law Assistant. Respondent No.3 was Accounts Assistant by the time he applied for the post of Law Assistant (R.3 had not filed reply statement. The date of his joining into railway service

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and other particulars were not referred to either in the OA or in the reply statement filed by Respondents 1 and 2.) Respondent-4 joined railway service as Assistant Station Master on 5-11-73. In due course he was promoted as Station Master and later as Traffic Inspector. He was working in the ex-cadre post of Instructor in the grade of Rs.1600-2660 by the time he applied for the post of Law Assistant. Respondent-5 joined service in the railways as Junior Clerk on 12-12-64 and in due course he was promoted as Senior Clerk and Head Clerk. He was working in the deputation post of Office Superintendent Gr.II in the payscale of Rs.1600-2660 by the time he applied for the post of Law Assistant.

7. While the applicant pleaded that the post of Law Assistant is an ex-cadre post, it was stated for the respondents that it is a general post, that is, the post is outside the normal channel of promotion for which candidates are called for from different categories whether in the same department or from different departments. It is evident even from the notification dated 7-1-91 that all the serving employees in the railways having law degree and who completed five years of service by the cut off date are eligible for consideration for selection for the post of Law Assistant. It is also made clear therein that on appointment to the post of Law Assistant they will be considered for promotion to the post of Chief Law Assistant and they will not be considered for promotion in their respective parent units.

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Thus it means that on appointment to the post of Law Assistant they will not have any lien in the parent unit. But in case of appointment in an ex-cadre post the incumbents will have their lien in their parent departments and they have to be considered for promotion in their parent units when their turn comes even when they continue to work in the ex-cadre posts. The contention, therefore, of the respondents that the post of Law Assistant is not an ex-cadre post and it is a general post envisaged under Rule 219(i) of Indian Railways Establishment Manual (IREM) has to be accepted. In fact even in the written arguments for the applicant which are styled as "note submitted for specific decisions on the issues raised during arguments" the post of Law Assistant is referred to as ex-cadre or general post. It is not seriously contended for the applicant that the post of Law Assistant is an ex-cadre post but not a general post. As the post of Law Assistant is outside the normal channel of promotion and as candidates from different categories from different departments are called for selection to the post of Law Assistant, we have no hesitation in holding that the post of Law Assistant is a general post. (The relevant portion of Rule 219(i) of IREM is as under:

219. PROCEDURE TO BE ADOPTED BY SELECTION BOARD :

(i) For general posts i.e. those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments, the selection procedure should be as under :--

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8. Serial Circular No.163/86 under letter No.P(R) 605/IV dated 14-11-86 was issued for guidance of the concerned authorities who are concerned with regard to the selection and promotion by non-selection and selection methods. It merely refers to the relevant rules as per IREM. It was issued for easy reference. Para 7.4 of the above circular states that the notional seniority marks allotted will be from 15 to 5 and distributed to all the candidates appeared for written examination in the same manner as it is done for those who are finally called for viva voce as explained in para 8.2. Rule 219(g) note(ii) lays down that the candidate must secure 60 per cent of marks in the written test for the purpose of being called for viva voce test for consideration for promotion on selection. Notional seniority marks have to be added for consideration as to whether the candidate secured the minimum of 60% or not. Thus even the candidates who got less than 60% in the written test have to be called for viva voce test if they secured 60% on addition of notional seniority marks. It is evident from para 7.4 of the circular dated 14-11-86 that the notional seniority marks have to be allotted from 15 to 5 and distributed to all the candidates. Thus a senior gets more marks whereas a junior gets less on the basis of the notional seniority marks. Anyhow there is no need to further advert to this aspect for disposal of this O.A. as notional seniority marks were not added to Respondents 3 to 5 or the other five who were called for viva voce. (When it was stated for the applicant that we have to peruse

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the relevant records to satisfy the contention for respondents that notional seniority marks have not been added to any of these candidates, we perused the relevant records and the records disclosed that notional seniority marks were not added to any of the candidates who have been called for viva voce test for the post of Law Assistant in the railway service. The records were returned after perusal). It is submitted for the respondents that the question of adding notional seniority marks does not arise in the case of selection for general post and hence they were not added to any of the candidates. Suffice it to observe that notional seniority marks were not added to allow the candidates who are called for viva voce test for selection as Law Assistants for the relevant year, and hence there is no need to advert for disposal of the point whether the notional seniority marks as envisaged in para 7.4 of the circular dated 14-11-86 should not be added in the process of selection to such posts ^{General} in the general category.

9. Rule 219(i) (ii) states that in the case of selection for general post, the selection board should call for viva voce test all candidates who secured not less than 60% marks in the written test. The final panel should be drawn up on the basis of marks obtained in the written and viva voce tests

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in accordance with the procedure for filling up selection posts. Rule 219(g) lays down that "selection should be made primarily on the basis of overall merit, but for the guidance of the selection board the factors that should be taken into account and relative weight are laid down as below:

	Maximum marks	Qualifying marks
(i) Professional ability	50	30
(ii) Personality, address, leadership and academic qualification	20	--
(iii) A record of service	15	--
(iv) Seniority	15	-- //

Rule 219(j) refers to the ~~method~~ ^{viva voce} to be followed in fixing seniority amongst the selected candidates and it reads as under:

"The names of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility."

10. It is submitted for respondents as under:

The marks for seniority were awarded as envisaged under para 219(g). None of the selected candidates got 80% or more marks. On adding the marks for viva voce, record of service and seniority to the

marks obtained in the written test, those who are in the higher scale of pay are placed above those in the lower scale. The total length of continuous service in the same or equivalent grade is taken into consideration for fixing the inter-se seniority of those who are in the same grade or equivalent grades as envisaged under Rule 320. On that basis R.3 to R.5 who are O.C. candidates are placed at serial numbers 1 to 3. None of the candidates called for the interviews is from S.C. or S.T. Shri G.Ramsudhakar, an S.C. candidate was promoted as Law Assistant on adhoc basis after he satisfactorily completed the period of training, as no one was selected for the vacancy for S.Cs. to the post of Law Assistant. ~~The learned~~

11. The learned counsel for the applicant contended that allotment of 15 marks for seniority and giving ~~of~~ ranks on the basis of seniority instead of on the basis of marks actually obtained are arbitrary and violative of Article 14 of the Constitution of India. The challenge is in regard to Rule 219(j) and also part of Rule 219(g) to the extent it states that 15 marks have to be allotted for seniority.

12. Rule 219(i) (ii) states that the final panel should be drawn up on the basis of marks obtained in the written and viva voce tests in accordance with the procedure for filling the selection posts. Rule 219(j) lays down the procedure for filling the selection posts. It states that those securing a total of more than 80% of marks have to be classed

as 'outstanding' and they have to be placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility. // The promotions are either on the basis of seniority subject to suitability, seniority-cum-merit, or merit-cum-seniority. In all such cases, weightage is given for seniority and the extent of weightage that has to be given for seniority varies depending as to whether it is on the basis of seniority-cum-suitability where practically the promotion is on the basis of seniority, while in the case of seniority-cum-merit more weightage is given for seniority, and less weightage is to be given for seniority in the case of merit-cum-seniority. Rule 219(j) is a case of merit-cum-seniority. It states that those who got 80% marks and above supersede seniors upto 50% of the vacancies notified. But even then seniority assumes importance amongst those who secured 80% and more. Those who are qualified for the viva voce supersede their seniors who are not qualified for the viva voce. But seniority is a factor to be taken into consideration from amongst those who secured above 60% but less than 80%.

13. It is vehemently urged for the applicant that when it is a case of calling for applications from candidates working in various categories from different departments, it is not just and proper to give ranking on the basis of seniority or on the

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basis of the payscale of the candidates, and the ranking has to be given only on the basis of marks obtained. But it was urged for the respondents that in case of direct recruitment for which outsiders and even the eligible service candidates can apply, the marks obtained alone will have to be taken as criterion for giving ranking, and as it is a case of selection from amongst the in-service candidates alone, weightage is given for seniority and the same cannot be held as arbitrary for it is a case of selection on the basis of merit-cum-seniority. It is for the policy maker to decide as to whether for promotion/selection mere seniority subject to suitability has to be taken as basis, or the seniority-cum-merit or merit-cum-seniority has to be prescribed, submitted the learned counsel for Respondents 1 and 2. It is urged that if the applicant even though in the lower scale of pay, had got 80% or more he could have superseded Respondents 3 to 5 who are in the higher scale and hence it cannot be stated that no purpose is served in calling for applications from those who are working in posts having lower scale of pay.

14. Even the All-India Services Recruitment Rules lay down that selection or promotion from the State service to all-India service has to be on the basis of grading given and those who are in the same grading have to be placed on the basis of seniority and those who are having higher grading have to be placed above those who

are having the lower grading. Thus it is also a case of merit-cum-seniority. It cannot be stated that the rich experience obtained due to length of service cannot be taken as an additional factor for selection/promotion, and if it is so taken it is arbitrary. When the length of service is also a relevant factor and when the same cannot be held as extraneous, the rule to the effect that seniority has to be taken as basis for those who are in same grading cannot be held as arbitrary. In fact in non-selection posts, seniority alone assumes importance and only unsuitable candidates are not promoted. The question as to whether a particular post should be treated as a selection post or non-selection post depends upon the responsibilities to be assumed by the incumbents of those posts. Time and again it was observed by the Apex court that there should be atleast one promotion if not more for the employees to progress. If merit alone has to be taken into consideration for promotion/selection, then some of the employees even though may have chance for consideration for promotion may not get promotion at all. Thus to ensure promotion and also for maintaining the efficiency of the service, quotas have been prescribed whereby certain percentage of vacancies have to be filled by seniority subject to suitability, while the remaining have to be filled on the basis of limited departmental competitive examination open

for only in-service candidates and/or by way of direct recruitment open for outsiders and also eligible in-service candidates. Generally the young will come into service if it is by way of direct recruitment. In view of the various quotas prescribed as per various recruitment rules, it can be stated that in the long run it is felt that the services in the higher posts have to be manned by those who are having long experience i.e. promotees and also those who are young and fresh from colleges and universities who come as direct recruits. It is also noticed that in order to encourage meritorious candidates in the service, quotas are fixed for promotion on the basis of limited departmental competitive examination wherein junior can steal a march over the senior.

15. The recruitment rule for the post of Law Assistant lays down that 66 2/3rd per cent of vacancies have to be filled by way of selection from amongst the in-service candidates having requisite qualification and five years of service, while the remaining 33 1/3rd per cent of vacancies have to be filled by direct recruitment. Even eligible in-service candidates can appear for direct recruitment. The ranking in the case of direct recruitment has to be necessarily given on the basis of the marks achieved by the candidates for there is no other alternative. Hence it cannot

be stated that there is no force in the contention for the respondents that there may not be any distinction between the selection for 66 2/3rd per cent and the selection for 33 1/3rd per cent if marks secured alone have to be taken as basis for the former. It is urged for respondents that as experience on the basis of length of service is also helpful in discharging the duties of Law Assistants, they are appointed to the post of Law Assistant without any training, and when the rule states that ranking should be on the basis of grade and within the grade seniority should be taken as the basis, instead of giving ranking on the basis of actual marks secured, the same cannot be held as arbitrary especially when the various recruitment rules including the all-India Services Recruitment Rules are also to the same effect.

16. When the length of service cannot be treated as an irrelevant factor for consideration for promotion/selection, we feel that the Rule 219(j) and Rule 320 of IREM which state that those who are graded as outstanding have to be placed above those who are in other grades, to the extent of 50% of the vacancies notified, and amongst those in the same grade the ranking has to be given on the basis of seniority, cannot be held as arbitrary especially when similar rule is there even for promotion/selection from the State Services to IAS/IPS/IFS.

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17. It is urged for the applicant that the allotment of 15 marks for seniority in case of selection to a general post from candidates in different categories from different departments is unreasonable, especially when seniority is again taken as basis for fixing seniority as amongst those who are in the same grade. We looked into the marks secured by the applicant and also of Respondents 3 to 5. The applicant has not secured 80 per cent and above marks even after exclusion of marks on seniority. Respondents 3 to 5 got more than 50⁶⁰ per cent of marks even after exclusion of marks allotted for seniority. (Marks for seniority are awarded as per para 8.2 in the circular letter dated 14-11-86 which is as under:

"8.2. METHOD OF ASSIGNING MARKS FOR SENIORITY:- The seniority marks at the time of viva voce shall be given as follows and these marks have no relationship with notional seniority marks earlier given for deciding the eligibility for interview.

- (a) Maximum seniority marks allotted to the senior most person shall be 15 and the minimum marks to the junior-most person will be 5.
- (b) The seniority marks are allotted only to those candidates who qualify to appear in the viva voce.
- (c) The marks between the junior-most and the senior-most person shall be proportionately divided and corrected upto the first decimal.
- (d) The seniority marks should be given to the SC/ST candidates also even though this will not be taken into consideration for deciding the suitability of the SC/ST candidates, except when filling up the SC/ST quota posts by deciding the best amongst the failed candidates.)

18. 1986(3) SLR 92 (C.S. Maurya Vs. UOI), judgement of the Delhi High Court was referred to for the applicant. It was merely held therein that as the applicant therein was also discharging the duties as that of R.7 therein and as both of them are in the same scale of pay and as the petitioner therein was confirmed earlier to the

date of confirmation of R.4 to R.7 therein, the petitioner therein had to be placed above R.4 to R.7 therein in accordance with para 5 of M.H.A.'s O.M.No.9-11/55-RPS dt. 22-12-59. But it may be noted that the relevant rules for railway employees are different from the rules applicable to other departments. Further it is stated for the Respondents 1&2 that as the post of Law Assistant is a general post for which the employees in various categories from different departments are eligible, the question of allotting quota for each department does not arise. The question of allotment of quota arises if there is more than one feeder category and for which the higher post is a regular channel of promotion for all such categories. Hence neither the above judgement nor the OM dated 22-12-59 is helpful to support the contention of the applicant that marks alone have to be taken as the basis for the placement in the panel for selection to the post of Law Assistants for which the employees in various categories in various departments are eligible.

19. For reasons stated, we cannot accede to the contention that Rule 219(j) read with Rule 320 of IREM is arbitrary and thus violative of Articles 14 and 16 of the Constitution. In the above view there is no need to refer to the contention for R.4 that this O.A. is barred by limitation or judgement reported in JT(1993)1 SC (108) (V.Kameswari Vs. UOI & ors.) relied upon to urge that even if the contention for the applicant has to be ~~not~~ upheld, his selection to the post of Law Assistant cannot be set aside as he had given up the lien in his parent unit on appointment as

Law Assistant and he had lost the chance of promotion in his parent unit. R.5 was not present during the hearing of the O.A. But he raised the same pleas as per his reply statement which are similar to the pleas of R.4.

20. As the applicant does not belong to S/C community he cannot challenge the adhoc appointment of Shri G. Sunderaraman, an SC candidate for the post of Law Assistant against SC quota.

21. The panel recommendation has to be restricted to the number of vacancies assessed as per Rule 215(f). One who is not p empanelled cannot claim promotion even if panel is exhausted. As such even the alternate relief prayed for the applicant cannot be granted.

22. In para 6 of the written note dated 17-2-95 of the applicant it is stated that Shri Nookaraju who did not qualify in the written test is being continued on adhoc basis as Law Assistant as against the candidates like the applicant who qualified in the written test. The said point was not pleaded. Shri Nookaraju is not impleaded as respondent. Hence we are not adverting to the same.

23. No other point was urged for the applicant.

24. This O.A. accordingly fails and hence it is dismissed. No costs. /

CERTIFIED TO BE TRUE COPY
.....
Date.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

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Copy to:-

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEEBADRI RAO
VICE CHAIRMAN

A N D

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

DATED 21/3/1995.

ORDER/JUDGMENT:

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

in
OA. No. 1039/92

TA. 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.

