

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO. 1130 of 1992. And no 1339192 -

Between

Dated: 29.12.1992.

1. Smt. Leela Narasimhan
 2. P.Radhaiah / Applicants
 ...
 And
 1. Senior Divisional Personnel Officer, S.C.Rly, Vijayawada.
 2. Senior Divisional Mechanical Engineer, S.C.Rly, Vijayawada.
 3. Chief Personnel Officer, S.C.Railway, Secunderabad.
 4. Sri. K.Venkaiah, Head Clerk, Statistical Cell, Senior Divisional Mechanical Engineer's office, S.C.Railway, Vijayawada.
 ...
 Respondents. /

Counsel for the Applicants : Sri. G.V.Subba Rao / .
Counsel for the Respondents : Sri. N.R.Devaraj, SC for Rlys.

CORAM:

Hon'ble Mr. R.Balasubramanyan, Administrative Member
Hon'ble Mr. T.Chandrasekhar Reddy, Judicial Member. ✓

The Tribunal made the following order:-

Both counsel are heard.

Admit. Eight weeks notice given to the respondents to file counter with an advance copy to the applicant. The applicant may file rejoinder if any within 2 weeks thereafter.

List this OA along with OA. 609/91 after the formalities are over.

In the meanwhile, by way of interim order the respondents are directed to treat the promotion of Sri. K. Venkaiah as subject to the outcome of this O.A.

M.A. 1339/92 is allowed.

Deputy Registrar (Judl.)

Copy to:-

1. Senior Divisional Personnel Officer, South Central Railway, Vijayawada.
2. Senior Divisional Mechanical Engineer, South Central Railway, Vijayawada.
3. Chief Personnel Officer, South Central Railway, Secunderabad.
4. Sri. K.Venkaiah, Head Clerk, Statistical Cell, Senior Divisional Mechanical Engineers Office, S.C.Rly, Vijayawada.
5. One copy to Sri. G.V.Subba Rao, advocate, CAT, Hyd.
6. One copy to Sri. N.R.Devaraj, SC for Railways, CAT, Hyd.
7. One spare copy.

Rsm/-

ASR ⑥
36/12/O.A. 1130/92

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CHECKED BY

APPROVED BY

HYDERABAD BENCH

HYDERABAD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD

NOTICE

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR.R. BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T. CHANDRASEKHAR REDDY:M(J)

AND

THE HON'BLE MR.C.J. ROY : MEMBER(JUDL)

Dated: 29/12/1992

ORDER/JUDGMENT:

R.A./C.A./M.A. NO.

O.A. NO.

in
1130/92

T.A. NO.

(W.P. NO.)

Admitted and Interim Directions issued.

Allowed

Disposed of with directions

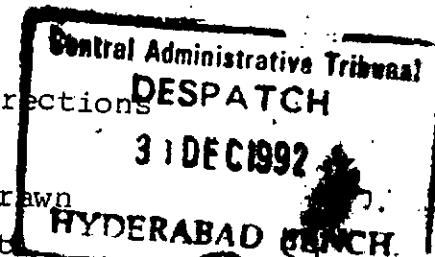
Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No order as to costs.



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IN THE ~~CENTRAL~~ ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A. No. 1130/1992.

Between:

Smt. Leela Narasimhan and .. Applicants.
another.

and

Senior Divisional Personnel Officer,
South Central Railway,
Vijayawada and Three Others. .. Respondents.

COUNTER AFFIDAVIT FILED ON BEHALF OF ALL THE RESPONDENTS.

I, P.S.MURTHY, S/o. ~~P~~ P.Sankaram, aged 49 Years,
Occupation: Government Service, do hereby affirm and state
as follows:

1. I am Sr.Divisional Personnel Officer, South Central Railway, Vijayawada and the Respondent No.1 herein and as such I am fully acquainted with all facts of the case. I am filing this Counter Affidavit on behalf of all the Respondents as I have been authorised to do so. The material averments in the O.A. are denied, save those that are expressly admitted herein. The applicants are put to strict proof of all such averments except those that are specifically admitted hereunder:
2. It is submitted that the applicants, Smt. Leela Narasimhan and P.Radhaiah are working as Senior Clerks in Grade Rs.1200-2040(RSRP) in the Statistical branch of the Mechanical wing of South Central Railway, Vijayawada Division, Vijayawada. The next avenue of Promotion for the Senior Clerks is Head Clerk in Grade Rs.1400-2300(RSRP) which is a 'non-Selection' Post and the Promotion to the same is on the basis of Seniority-cum-Suitability following reservation rules applicable to SC/ST Employees. The applicants are challenging the promotion of respondent No.4 to the Post of Head Clerk against a carry forwarded ST Roster Point.

P.S.M
पर्यावरण विभाग
द. म. रेलवे, विजयवाडा.
Senior Divisional Personnel Officer
S. C. Rly, VIJAYAWADA

3. It is stated that prior to the issue of the Railway Board's letter referred to in Para 4 below, communal composition for promotion of employees to a higher post shall, after having determined the total number of vacancies, be determined with reference to 40 point roster. This 40 point roster is a running account wherein the employees promoted to a particular category will be indicated and each cycle consists of 1 to 40 points. The points reserved for SC are 1,8,14,22,28 & 36 and the points reserved for ST are 4,11 & 31. As and when vacancies in a particular grade occur, the employees in the lower grade according to seniority and subject to suitability are required to be promoted against the communal roster point. If for any reason, any SC/ST employee could not be promoted or is not available for Promotion against SC/ST point, the same point has to be carried forward to three recruitment years, after obtaining the approval of the competent authority for de-reservation.

4. Meanwhile, the Railway Board, vide their letter No.89-E(SCT)I/49 5(Pt.)dated 16.6.1992 communicated by the Chief Personnel Officer/Secunderabad under Serial Circular No.93/92, have modified and issued instructions in respect of reservations for SC/ST employees in promotion to the next higher grade. According to these instructions, the number of Posts/Vacancies for the SC/ST employees should be worked out by applying 15% , 7.5% if the total sanctioned posts for SC/ST respectively. While calculating the required number for each community, fraction of 0.5 and above should be rounded off to one and less than 0.5 should be ignored. If the required number of SC/ST employees to the extent of 15% and 7.5% respectively on the cadre strength is available, there is no need to observe the points on the communal roster.

Subsequently, the Chief Personnel Officer, South Central Railway/Secunderabad vide his letter No.P(Res.)171/Policy/Vol.VII dated 24.9.1992 communicated under Serial Circular No.125/92

issued clarification that in small cadres,

while applying the percentage of 15 for SCs and 7.5 for STs, where the fractions work out to be less than 0.5 and founded off to zero, implying that no reservation is provided for in those categories, the 40 point reservation roster has to be followed without following the procedure indicated for calculation of vacancies in S.C.No.93/92. These clarifications were issued to avoid violations of constitutional provisions regarding communal reservations.

5. The total sanctioned strength of Head Clerk in Statistical Branch is 4 and the reservation for ST works out to less than 0.5. In view of this position, the 40 point reservation roster has to be followed in view of the CPO's clarification issued in Serial Circular No.125/92. Therefore, the contention of the petitioners that there will no quota for ST employee in the category of Head Clerk is not correct and ~~xx~~ such stand would be in contravention of the constitutional provisions.

6. It is submitted that one post of Head Clerk in Statistical Branch had fallen vacant during June, 1991 due to the transfer of One Head Clerk by name Shri K.N.Ponnappan to Hubli Division on Promotion as Chief Clerk/Office Superintendent, Gr.II in Scale Rs.1600-2660(RSRP).

In the 40-Point reservation roster, maintained for the category of Head Clerk, there has been a short fall of SC point and the vacancy occurred due to promotion of Shri K.N.Ponnappan as Chief Clerk/Office Superintendent,Gr.II was required to be filled by considering SC employee in the category of Sr.Clerk for promotion to the category of Head Clerk so that the short fall of SC can be wiped out. But no eligible SC employee was available for consideration. In view of non-availability of eligible SC employee for being considered for promotion as Head Clerk, Shri A. Doraiswamy who is the senior most senior Clerk and who belongs to OC Community was promoted as Head Clerk purely on adhoc basis against the vacancy to be filled by SC Employee.

P. Srinivas

Deponent.

परिषद् मण्डल कामिक अधिकारा

ग. रेलवे, विजयवाडा.

10. Deponent Office

7. It is submitted that during 1981-82 one ST point had arisen in the 40 point reservation roster in the category of Head Clerk. As there were no eligible ST employees in the category of Senior Clerks for being considered for promotion as Head Clerk against the ST point, one CC employee was promoted as Head Clerk and the shortfall was carried forward. Even on subsequent occasions, as no eligible ST Candidate was available, the ST point was carried forward. Shri K.Venkaiah, Senior Clerk in Grade Rs.1200-2040(RSRP) who belongs to ST community and who completed minimum service of 2 Years in the lower grade on 10.7.1992 had represented on 18.7.1992 that he may be promoted as Head Clerk against the short-fall. Since, the eligible ST Employee, Shri K.Venkaiah has become available, he has been considered for promotion as Head Clerk against the ST short-fall and accordingly he was promoted as Head Clerk in Scale Rs.1400-2300(RSRP) on 20.11.92. The rule position is explained in detail in para 10 below while answering specific averments raised in para VI (9) & (10) of the O.A.

8. Regarding averments as to promotion and subsequent reversions of A.Doraiswamy, it is submitted that it was clearly indicated in the promotion orders issued to Shri A.Doraiswamy on 17.6.1991 that he was promoted as Head Clerk purely on adhoc basis against the vacancy to be filled by the reserved community employee. Shri Doraiswamy who should have been reverted as Sr.Clerk consequent on promotion of Sri K.Venkaiah as Head Clerk, was allowed to continue on adhoc basis as Head Clerk against leave vacancy.

9. Regarding contentions of para VI (6) & (7) of the O.A. it is submitted that Shri K.Venkaiah while working as Jr.Clerk in Mechanical Dept./Vijayawada sought for transfer to the Statistical branch on bottom seniority during the year 1989. At that time, there was a vacancy of Jr.Clerk in the statis- and the request of Shri K.Venkaiah was considered

P. Srinivas
Depponent

He was transferred to the statistical branch on bottom seniority at his own request.

(b) Subsequently, he was promoted as Sr.Clerk in Grade Rs.1200-2040(RSRP) on 10.7.1990 against the short-fall of ST point in the category of Sr.Clerk which was existing at that time, since he was the only ST employee available and eligible in the category of Jr.Clerk for promotion as Sr.Clerk. Therefore, no favour was shown to Shri K.Venkaiah ignoring the other junior Clerks. At any rate the said promotion cannot be assailed in this O.A.being an entirely different issue.

(c) Though Shri Abdul Shukkur is senior to Shri K.Venkaiah in the category of Jr.Clerks in the Statistical branch, Sri K.Venkaiah was considered for promotion as Sr.Clerk against the short-fall of ST point, to enable the shortfall being wiped out. The position was furnished in the counter filed in O.A.No.609/91 and the same is pending before the Hon'ble Tribunal. It is humbly submitted that the applicants cannot rely on the contentions in the O.A. in which the applicants are not a party. It is further submitted that the cause of action in the said OA is different and distinct from the dispute in this O.A.

10. Regarding the contentions in para VI (9) & (10), it is submitted that the voluntary retirement tendered by Shri A.Doraiswamy was on his own volition due to his domestic as well as health problems and it was not a forced one, as contended by the applicants. Eventhough Sri Doraiswamy was to be reverted as Sr.Clerk consequent on promotion of Shri K.Venkaiah against the shortfall of a reserved vacancy, he was allowed to continue to work as Head Clerk in a leave vacancy, purely as a temporary measure. Hence after retirement of Shri A.Doraiswamy on 31.12.1992, a regular vacancy occurred in the category of Sr.Clerk only but not in the category of Head Clerk as contended by the petitioners in view of the fact that he was only a senior Clerk but promoted as Head Clerk purely on adhoc basis against the vacancy of a Head Clerk to be filled by

P. G. Brady
Deponent:
वारस्थ मन्त्रल कार्यालय आधिकारी
द. ग. रेलवे, विजयवाडा.
Senior Assistant Engineer
MADA

ST employee and subsequently allowed to continue as Head Clerk against leave vacancy. It is once again reiterated that the promotion of Shri K.Venkaiah as Head Clerk was ordered against the shortfall of a roster point.

(b) Eventhough the point occurred in the roster is not reserved point, as per the extant instructions of the Rly. Board and Hd.Qrs. office, the short-fall of SC or ST points in the roster should be wiped out first as far as possible while ordering the promotion from one grade to another grade. As there was a short-fall of ST point existing in the category of Head Clerk and to wipe out the same, Shri Venkaiah who belongs to ST community was considered for promotion as Head Clerk.

(c) The contentions put forth by the petitioners that the reservation was carried forward after three recruitment years are over is not correct. It is respectfully submitted that three recruitment years have not elapsed after occurrence of the short-fall. In fact the shortfall had originally occurred in 1981-82. The short fall is to be carried forward for three recruitment years. It is submitted that the years when no selections are held or only one vacancy arose are to be ignored for reckoning recruitment year (Annexure R.II). In terms of the said instructions R.4 was promoted in the second recruitment year against the carry forward roster point of 1981-82. Details of promotions made during the year for 1981-82 to 1992-93 are furnished in Annexure R-III.

(d) Shri M.V.S.Narayana Rao who belongs to ST Community was promoted as Head Clerk on 1.10.1980 against the upgraded post due to restructuring of the Cadre. He was promoted as Head Clerk according to his seniority against roster point No.2 which is an un-reserved point. Sri M.V.S.Narayana Rao was subsequently promoted as Chief Clerk/Office Supdt. Gr.II which is controlled by the Hd.Qrs.Office. The Point No.4 in the roster for Head Clerk is a reserved point which had occurred subsequently during the year 1981-82 and was to be filled by ST Employee. The same point was carried forward

Deponent:
गोप्यकारा
ग. अधिकारी
Office

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as no eligible ST employee was available for consideration for promotion as Head Clerk. Shri K.Venkaiah, who belongs to ST community was promoted as Head Clerk against the shortfall of the above point.

The contention of the petitioners that the ST point was already consumed with the promotion of Shri M.V.S.Narayana Rao as Head Clerk is therefore not correct.

11. It is submitted that the applicants had submitted a joint representation on 18.11.1992 (Annexure R(V)) against the promotion of Shri K.Venkaiah as Head Clerk. They were advised of the position vide this office letter No.B/P.535/III/28/Vol.II dated 23.11.1992 (Annexure R-V).

For the reasons stated above, the applicant has not made out any case either on the facts or on law and there is no merit in the O.A. It is, therefore, prayed that this Honourable Tribunal may be pleased to dismiss the O.A. with costs.

J. S. Ravi
DEPONENT.

वरिष्ठ मण्डल कार्मिक आंधकार
द. म. रेलवे, विजयवाडा.

Solemnly and sincerely affirmed Senior Divisional Personnel Officer
this Twenty ninth day of June 1993
S. C. Rly, VIJAYAWADA
and signed his name in my presence.

Before me.

W. C. Rly

Attestor.

Assistant Personnel Officer G&O
S.C.Rly, VIJAYAWADA

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