

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A. NO. 1015/91

and

O.A. No. 152/92.

Date of Order: 9-12-94

Between:

G.V. Perumal

.. Applicant in O.A. 1015/91

D. Rajarathinam

.. Applicant in O.A. 152/92

and

Union of India, rep. by General Manager,
S.C. Railway, Railnilayam,
Secunderabad.

2. Divisional Railway Manager (Pers) BG
S.C. Rly, Secunderabad Division,
Opp. Railnilayam, Secunderabad. .. Respondents in both OAs.

3. Sr. Divisional Operating Superintendent (BG)
S.C. Rly, Secunderabad Division,
Opp. Railnilayam, Secunderabad.

.. Respondent No 3 in O.A. 1015/91

Counsel for the Applicant in
the both the cases. .. G. Ramachandra Rao, Advocate.

Counsel for the Respondents: Mr. V. Bhimanna, SC for Rlys (O.A. 1015/91)
Mr. D. Gopal Rao, SC for Rlys (O.A. 152/92)

CORAM:

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

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

JUDGMENT

(as per Hon'ble Sri R. Rangarajan : Member (Admn.))

Both the OAs are disposed off by a common judgment as the contentions are same and so is the relief asked for. The facts in the O.A. 1015/91 are taken as a representative case for analysis.

2. At the time of filing this OA on 23-10-1991, the applicant of this O.A. 1015/91 was working as Station Master in the grade of Rs. 1400-2300 (RSRP) at Ghat Nandur Railway Station. He was directly recruited as Assistant Station Master in the grade of Rs. 330-560 on 2-4-1978 and the applicant was regularly posted to that grade on 20-3-1979.

8. The respondents in their reply statement did not dispute the fact that he became eligible for consideration for promotion to the post of ASM in the grade of Rs. 425-640(Rs) and Rs.455-700(Rs) as per the Railway Board's letter dt. 29.7.1983. It is also not disputed that he was promoted to the grade of 425-640 from 1.8.1982 and became eligible to draw pay in the higher grade viz. Rs. 425-640 from 1.8.1983. However, they allege that he failed to qualify himself for promotion to the grade of Rs.455-700 which is selection post for which a selectionheld consisting of both written and viva-voce as per the procedure laid down in para-4.1 of the above quoted Railway Board's letter dt. 28.7.83. As the promotion to the grade of Rs.455-700(Rs) which is a selection post is second promotion for the applicant arising consequent to the orders of restructuring issued by Railway Board dt. 29.7.1983, he must necessarily be subjected to a selection as per para 3.1 of the above quoted letter and as he failed in the selection, he was not empanelled to that grade. Hence, he cannot claim seniority above those who were promoted earlier to him in the grade of Rs.455-700(Rs) though they were junior to him in the grade of Rs.330-550.

9. The applicant contends that the para-3.1 has to be read with para 3.2 of the Railway Board's letter dt.29.7.1983 and if that had been done, it would be clear that he has to be empanelled to the grade of Rs.455-700 without subjecting him to selection and hence the respondents had erred in denying him promotion to the grade of Rs.455-700 on the ground that the applicant was not declared qualified in the viva-voce by the selection committee which was constituted for selecting the employees for promotion consequent to restructuring. To that effect, he had also filed a rejoinder.

10. The learned counsel for the applicant urges that the applicant has to be promoted without subjecting him to selection to the post of 455-700 though it is a selection post, for which a vacancy was created due to restructuring in terms of para 3.1. and 3.2 of Railway Board's letter dt. 29.7.1983. The respondents ~~will~~ submit that the promotion of the applicant to the post of 455-700 is his second promotion and as that post in that grade is a selection post modified procedure is not applicable for selecting him to that post and he must necessarily be subjected to a

5. The grades of Rs.425-640 (E) and Rs.455-700 (E) were merged into a single grade of Rs. 1400-2300 (RSRP) under the revised scales of pay as per IV pay Commission recommendations. A provisional seniority list of the ASM's in the grade of Rs.1400-2300 as on 1.4.1989 was published on 29.5.1989 in which the applicant was shown junior to some of the ASMs who were his erstwhile juniors in the cadre of Rs. 330-560(R). He made a representation for promoting him to the post of ASMS in the grade of Rs. 455-700 under the modified selection procedure without subjecting him to written and viva-voce tests in one of the upgraded posts which has arised consequent to the orders of restructuring dt. 29.7.1983 issued by Railway Board. He also represented to correct his seniority as if he entered the grade of ASM in Rs.455-700 with effect from 1.8.1982. As he belongs to SC community he also represented that he should be promoted as per rules for giving promotion to reserved community candidates. These representations dt. 20.5.1986, 28.10.1986, 20.12.1990 and 5.5.1991 may be seen at Annexures 7 to 10.

6. He was informed by R-2 by his letter dt. 21/24-6-91 bearing No.CP/535/P11/SM-ASM3/Seniority that as he was not empanelled to the grade of Rs.455-700 by 31-12-1985, those who are in the grade of Rs.455-700 as on that date were shown senior to him and hence the seniority list issued as on 1.1.1986 is in order. He was also informed that the rules for following the roster in regard to the reserved community has been strictly adhered to. As he was not empanelled to the grade of Rs.455-700(R) consequent to the selection held in 1984 and 1985, he was not promoted to the grade of Rs.455-700.

7. Aggrieved by the above reply of the respondents in not correcting the seniority list as requested by him, he has filed this OA praying for setting aside the impugned proceedings dt. 21-24-6-91(Annexure II) on the file of R-2 and for a consequential direction to the respondents to empanel him and promote him to the post of ASM in the grade of Rs.455-700(R) on par with his juniors with all attendant benefits including arrears of pay and promotion to the next higher post.

Para-3.2. stipulates that "for the purpose of promotion the existing selection procedure will stand modified to the extent that the selection will be based only on service records without holding any written and /or viva-voce tests."

12. The respondents interpret that if a railway servant becomes eligible for consideration to promotion due to restructuring, he will be promoted to the next higher grade, higher than one he is presently holding prior to restructuring by modified selection procedure in terms of para 3.2 even though the higher post is a selection post without subjecting him to a process of selection by holding written and/or viva-voce tests. If he is to be promoted two grades higher, i.e. a post higher to the immediate higher post which he was occupying before restructuring and if that post happens to be a selection post, he has to be subjected to normal selection procedure as per para 3.1 of the Railway Board's Circular dt. 29.7.1983.

13. We find force in the submission of the learned counsel for the respondents. As can be seen from the proceedings of Railway Board dt. 29.7.1983 and the Railways internal circular dt. 5.10.1983 the restructuring should be implemented early and to that effect the modified procedure has to be followed. It does not mean that the efficiency of the organisation has to be sacrificed to achieve quick results. As a compromise to effect early implementation of the restructuring proposals and also to maintain efficiency a suitable procedure has to be evolved. In this context the para 3.1 has to be interpreted. No doubt, this para is not very happily worded. When two interpretations are possible to the para, the one which is advantageous to the staff without reducing the efficiency of the working of the organisation has to be preferred.

14. In any restructuring proposal the number of employees considered for promotion to the next higher grade will be very much more compared to the number of employees considered for promotions to more than one grade. Hence, the number of individuals to be promoted to the next higher grade, higher to the post the individual was holding prior to restructuring will be very high. Hence, if the promotion to the next higher post,

selection in terms of para 3-1 of the above quoted Railway Board's letter. The resolving of this controversy has come up for adjudication in this case. Para 3.1 and 3.2 of the Railway Board's letter dt. 29.7.1983 reads as under:-

"3.1. The vacancies in the various grades of the posts covered in these categories as existing on 31.7.1983 and those arising in the context of the cadre-restructuring will be filled in the manner indicated below. However, in a case, where as a result of this restructuring, an individual railway servant becomes due for promotion to more than one grade above his present grade, and if promotion to posts in any of these grades calls for selection, then promotion to that grade(s) will be governed by the normal rules for promotion (emphasis added).

3.2. For the purpose of promotion in terms of the preceding sub-paragraph, the existing selection procedure will stand modified to the extent, that the selection will be based only on scrutiny of service records without holding any written and /or viva-voce tests. Naturally, under this procedure, the category of "Outstanding" will not arise. This modified selection procedure has been decided upon by the Ministry of Railways as a one-time exception by way of a special dispensation in view of the numbers involved, with the objective of expediting the implementation of these orders. It is reiterated that the normal rules governing promotion to selection and non-selection posts will apply to vacancies in the aforesaid categories arising after 1st August, 1983".

11. Para 3.1 states that "if an individual Railway servant becomes due for promotion to more than one grade above his present grade, and if promotion to posts in any of these grades calls for selection, then promotion to the grade(s) will be governed by normal rules of promotion."

15. The next contention of the learned counsel for the applicant is that if an S.M. in the grade of 425-640 who qualifies for consideration for promotion to the grades of 455-700 and 550-750, he had been promoted to the selection grade of 455-700 by modified selection procedure and to the higher grade also without selection as the grade 550-750 happens to be a non-selection post. In the case of a Railway servant promoted to 455-700 from 425-640 the same was done by modified procedure whereas the applicant who also belongs to the same category of SMs/ASMs was subjected to a selection for promotion to the same grade of 455-700. This is a clear case of discrimination urges the applicant's counsel.

16. In the case of the applicant the promotion to be considered to grade of Rs.455-700 is a second one, the first promotion being to the grade of 425-640 from the lower grade of 330-560 which he was holding prior to the restructuring of the cadre. In the case of SMs who are in the cadre of 425-640 their first promotion is to the grade of 455-700. Hence, though the promoted grade of 455-700 is same in both the cases, the promotion of the applicant to this grade is a second promotion whereas in the other case it is the first promotion. The applicant is promoted from the basic grade of 330-560, whereas in the other case it is from the basic grade of 425-640. Hence, it is evident that the case of the applicant has no comparison with the other case. Discrimination arises only when two similarly placed employees are treated differently for promotion to the higher grade. In this case the basic grade of the applicant and the other is different and the applicant is promoted to the grade of 455-700 as a second promotion and in the other case, it is the first promotion to that grade. Hence, it cannot be said by any stretch of imagination that the applicant was discriminated in considering him for promotion to the grade of 455-700 by subjecting him to a process of selection. Hence, this contention fails.

17. It is further submitted by the applicant that the General Manager has powers for relaxing the rules for selection which could have been exercised in his case. Rules exist for dispensing written examination in a selection post if the selection is to be

even if it is selection post is done by the modified procedure it will be advantageous to the employee in the sense that the seniors failing in that selection, due to their inability to write the examination due to age and other factors, inspite of having experience of working in that cadre, is considerably reduced. If one more promotion is to be given to the same individual due to restructuring, the number of such promotions will be very few and holding of selection if that happens to be a selection post will not be time-consuming one as the candidates subjected to the selection will be few. This will also avoid unnecessary dilution of the cadre. With this twin objective in view, the para 3.1 has to be read. As pointed out earlier, this para is not very happily worded. It could have been easily stated "that if a Railway servant becomes due for promotion to more than one grade above his present grade which he was holding prior to restructuring the promotion to that next higher grade above that of the one he is holding should be granted following modified selection procedure as per para 3.2. In case, the individual railway servant has to be promoted to more than one grade the promotion to the higher grades above the next higher grade has to be done following the normal selection procedure. The above is the essence of para-3.1 and 3.2 of the Board's above said circular. No other interpretation will achieve the twin objective of early promotion to the staff as per their seniority and maintaining the efficiency of the organisation. Hence, we feel that the interpretation given by the respondents and conducting the selection to the grade of Rs.455-700 when an ASM has to be promoted to that grade from the grade of Rs.330-560 (the next higher grade of Rs.425-640 is done through modified selection) while implementing the restructuring proposal is in accordance with the rules. The applicant has been correctly subjected to selection when he has to be promoted to the grade of 455-700 for implementing the restructuring proposals. As he failed to qualify in the selection, he was not empanelled to the ~~higher~~ grade of 455-700 and hence his juniors who were already in the grade of 455-700 as on 31.12.1985 were rightly shown as seniors to him in the seniority list published on 29.5.1989.

Inspite of all these opportunities the applicant failed to attend the selection on the ground that he should not be subjected to any written test and viva-voce and should be automatically empanelled to the grade of 455-700 only on perusal of records.

20. There is no rejoinder to the averment of the respondents that the applicant has not attended the written test when called for. The only reason for not attending the selection to the grade of 455-700 is his claim that he had to be selected without being subjected him to selection process as para-3.1 and 3.2 of the Railway Board's letter dt. 29.7.1983.

21. Whether he should be subjected to selection when it is a second promotion is a point for consideration in this O.A. also. This point has been exhaustively considered in para supra while discussing the case of the applicant in O.A.1015/91 who was also similarly situated as the applicant herein. We had come to the conclusion in the earlier case that passing of the selection is pre-requisite for second promotion if that grade to which the railway servant is to be promoted as a second promotion due to restructuring of the cadre is a selection post.

22. As the applicant herein failed to qualify in the selection, he has no case and this OA also is liable to be dismissed.

23. In the result, both the OAs. 1015/91 and 152/92 are dismissed as having no merits. No costs.

CERTIFIED TO BE TRUE COPY

DATE : 11.12.1994

Court Officer

Central Administrative Tribunal

Hyderabad Bench

Hyderabad.

To

1. The General Manager, S.C.Rly, Union of India, Railnilayam, Sec'bad.
2. The Divisional Railway Manager, (pers(BG) S.C.Rly, Secunderabad Division, Opp:Railnilayam, Secunderabad.
3. The Senior Divisional Operating Superintendent (SC) S.C.Rly, Secunderabad Division, Opp:Railnilayam, Secunderabad.
4. One copy to Mr.G.Kamachandra Rao, Advocate, CAT.Hyd.
5. One copy to Mr.V.Bhimanna, SC for Rlys, CAT.Hyd.
6. One copy to Mr.D.Gopal Rao, SC for Rlys, CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.
8. 3 copies to Library, CAT.Hyd.

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Case No. O.A.1015/91&152/92
Date of Judgment: 9-12-94

Case made ready on 16-1-95.

Section Officer (S)