

(3)

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

DA No. 1134/1992.

Dt. of Order: 19-10-93.

Kallam Siva Prabhakara Reddy

...Applicant

Vs.

1. Chief Personnel Officer, South
Central Railway, Sec'bad.

2. Sr.Divisional Personnel Officer,
S.C.Railway, Sec'bad.

3. Divisional Railway Manager (P),
S.C.Railway, Hyderabad Division,
Sec'bad.

...Respondents

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Counsel for the Applicant : Shri J.Sudheer

Counsel for the Respondents : Shri N.R.Devraj, SC for Rlys

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CORAM:

THE HON'BLE SHRI A.B.GORTHI : MEMBER (A)

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (J)

(Order of the Divn. Bench passed by Hon'ble
Shri A.B.Gorthi, Member (A)).

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O.A. No.1134/92

Dt. of decision: _____

J_u_d_g_e_m_e_n_t

X As per the Hon'ble Mr. A.B. Gorthi, Member (Admn.) X

The applicant, a law graduate, is aggrieved by the respondent's refusal to appoint him as a regular Law Assistant in the scale of pay of Rs.1600-2660 in South Central Railway. His claim is for a direction to the respondents to cancel the impugned order dated 23-3-92 under which he was appointed as a Law Assistant on an ad hoc basis and to treat the applicant as a regularly promoted to the post of Law Assistant w.e.f. 23-3-92 with all consequential benefits.

2. The applicant was working as a Head Signaller in the scale of pay of Rs.1400-2300, when due to modernisation, the cadre of signallers was abolished in a phased manner. The surplus staff had to be redeployed and absorbed in other departments. Some of the colleagues of the applicant were consequently absorbed as Guards/Ticket Collectors in the recruitment grade without subjecting them to any further process of selection. The applicant gave his option for his posting as Law Assistant in recruitment grade, vide his letter dated 4-10-91. The respondents vide the impugned order dated 23-3-92 promoted the applicant as Law Assistant in the scale of Rs.1600-2660, but declared that the said promotion was purely on ad hoc basis and would not confer upon him any prescriptive right for continuance, seniority, and future promotion unless he was selected and empanelled. The applicant's contention is, that being a law graduate he was fully qualified for being appointed as Law Assistant and that as he

and gave his option for appointment as Law Assistant, him the the respondents were not justified in denying/benefit of regular appointment as a Law Assistant.

3. The respondents have stated in their counter affidavit that 22 posts in the cadre of Signallers were rendered surplus and the employees were asked to exercise options for absorption in other departments. Depending on the options given and availability of vacancies, several signallers were absorbed as Goods Guards, Ticket Collectors etc. in recruitment grade on bottom seniority. Prior to their absorption, they were working in the scale of Rs.1400-2300/ Rs.1200-2040 they were absorbed in posts carrying identical scales of pay or even lower scales of pay. The question of conducting any selection in their respect did not arise. In the case of the applicant, he opted for the promotional post of Law Assistant which carried the higher scale of pay of Rs.1600-2660. As per the relevant recruitment rules 66-2/3% of the posts of Law Assistant were to be filled up by a process of selection from amongst the qualified departmental candidates. Admittedly, the applicant appeared for the written test for promotion to the post of Law Assistant, first in 1990, and again in 1991 but did not qualify.

4. Para 131 of the Indian Railway Establishment Manual Vol.I governs the recruitment to the post of Law Assistant. The same is reproduced below.

" (v) LAW ASSISTANTS

131. (1) The vacancies in the category of Law Assistants in scale Rs.1600-2660 will be filled as under:-

(i) 33-1/3% by direct recruitment from open market and

(i) Educational:- A University Degree in Law with 3 years standing as a pleader at Bar. Serving employees who are Law Graduates may also be allowed to apply for these posts provided they have served for at least 5 years in any Branch of the Railway Administration. Vacancies earmarked for direct recruitment should also be available to the Railway Magistrates who are desirous of applying for such posts and who also fulfil the prescribed qualifications for the direct recruits.

(ii) Age:- Upto 35 years

XE (NG) II/RC1/153 dt.24-2-1982

(iii) Qualifications for promotees:- The remaining quota of 66-2/3% of total vacancies should be filled by promotion, on the basis of selection, of serving employees with at least 5 years service and possessing a Degree in Law, irrespective of the Department in which they may be working. The promotion quota will be filled to the extent indicated above subject to the availability of suitable candidates. Otherwise the remaining vacancies will also be filled by direct recruitment.

5. From the above it is apparent that a departmental candidate can claim promotion to the post of Law Assistant on the basis of selection. In otherwords selection is a pre condition for being promoted to the post of Law Assistant. The fact that the applicant was rendered surplus in the cadre of signallers and that he is Law qualified and is eligible to be appointed as a Law Assistant is without any doubt. There is also no dispute that the applicant had opted for being appointed as Law Assistant. In view of his option followed by his request which he made by his letter dt.9-1-92, the respondents considered his case and promoted him on an ad hoc basis. They could not regularly promote him because of the contents of Para-131 of IREM. The applicant having appeared for the selection test and having failed there-at, cannot claim, as a matter of right to be promoted to the post of Law Assistant on a regular basis.

6. The contention of the applicant that he did qualify in the written examination, but the respondents unfairly rejected him after the viva-voce cannot be accepted. It is well settled that it is not for the Tribunal to hear appeals over the decisions of the selection committees or to scrutinise the relative merits of the candidates. Whether a candidate is fit for promotion or not has to be decided by the selection committee. The decision of the selection committee can be interfered with only on limited grounds such as illegal or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved mala fides affecting the selection, as has been held in Dalpat Apat Saheb Salunke Vs. Dr. B.S. Mahajan AIR 1990 SC 434.

7. In the reply affidavit filed on behalf of the applicant it was stated that the respondents appointed Mr. G.V. Ratnam as a Law Assistant without subjecting him to any process of selection. Similarly, Mr. Rama Sudhakar was selected for the post of Law Assistant, even though he did not qualify in the written test. The respondents denied both the allegations and stated that they committed no irregularity in the matter of selection/promotion of other candidates to the posts of Law Assistant. As regards Mr. G.V. Ratnam, he was directly recruited as a Law Assistant in terms of IREM Para-131.

8. In the result, the application is liable to be dismissed. It is open to the applicant to take further chances to appear for the selection test if it is permitted under the extant instructions. Similarly, it is open to the respondents to utilise the services of the applicant even on ad hoc basis.

vacancy.

9. Subject to the above observations the OA is dismissed.
There shall be no orders as to costs.

T. Chandrasekhar Reddy
(T. Chandrasekhar Reddy)
Member (Judl.)

Signature
(A.B. Gorathi)
Member (Admn.)

Dated the 19 October, 1993
(By circulation)

Dy. Registrar (Judl.)

kmv

Copy to:-

1. Chief Personnel Officer, South Central Railway, Sec-bad.
2. Senior Divisional Personnel Officer, South Central Railway, Secunderabad.
3. Divisional Railway Manager (P) South Central Railway, Hyderabad Division at Secunderabad.
4. One copy to Sri. J. Sudheer Kumar, advocate, CAT, Hyd.
5. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
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6th 28/10/93
Rsm/-
P.S. 28/10/93

O.A. 11
TYPED BY

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)
AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY,
MEMBER(JUDL)

AND

THE HON'BLE MR.P.T.TIRUVENGADAM:M(A)

Dated: 19/10/1993.

ORDER/JUDGMENT:

N.A./R.A./C.A. No.

in
O.A. No. 1134/92

T.A. No. (W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered.

No order as to costs

pvm

25/10/93 (8)