

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

OA.1015/91 & 152/92

decided on : 9-12-94

Between

G.V. Perumal
D. Rajarathinam
and

: Applicant in OA.1015/91
: Applicant in OA.152/92

Union of India, rep. by
General Manager SC Rly
Rail Nilayam
Secunderabad

2. Divnl. Rly Manager(Pers) (BG)
South Central Railway
Secunderabad Division
Opp. Rail Nilayam
Secunderabad

: Respondents in both the OAs

3. Sr. Divnl. Optg. Supdt(BG)
SC Rly., Secunderabad Divn.
Opp. Rail Nilayam
Secunderabad

: Respondent~~3~~ in OA.1015/91

Counsel for the applicant
in both the cases

: G. Ramachandra Rao,
Advocate

Counsel for the respondents

: V. Bhimanna, SC for Railways
(OA.1015/91)-

D. Gopal Rao, SC for Railways
(OA.152/92)

CORAM

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)

O.A.No.1015/91 & 152/92.

Pre-delivery Judgment in the above OAs typed as per
Hon'ble Sri R.Rangarajan, M(A) for concurrence please.

HM(A)

HVC

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6/12/94

(G.Rangiah)
S.P.A.

6/12/94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

C.A.No. 1015/91 & 152/92

T.A.No.

DATE OF DECISION:

9/11/84

Gr. V. Resumal (OA 1015/91)

Applicant(s)

D. Ratnasatnam (OA 152/92)

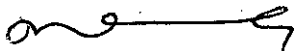
Versus


G.M. SC Rly, Sec. Board, Sec.

Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? **yes**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? **no**


(R. Rangarajan)
Member


(V. Neelesh Rao)
Vice-Chairman/Member

J U D G M E N T

[as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

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.No.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.No.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.

3. During the year 1983, Railways have decided to restructure certain Group C & D category posts and accordingly, the Ministry of Railways issued a circular No.P.C.III/80/UPG/19, of 29.7.1983 (Annexure-I). As per this circular 25% of the posts in the combined cadre of Station Masters and Assistant Station Masters in the grade of Rs.425-640 (RS) were upgraded, and 45% of the posts in the grade of Rs.455-700 were also upgraded. It is stated in the said circular that the staff who were placed in the revised grades will be eligible to draw pay in the higher grades from 1.8.1983 with benefit of proforma fixation with effect from 1.8.1982. The method and manner of filling up the vacancies of various posts arising consequent to the restructuring of the grades was indicated in para-3.1 and 3.2 of the above said circular. In respect of selection grades, the existing selection procedure was modified by selecting candidates only on the basis

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of scrutiny of service records, without holding any written or viva-voce tests as a one time exception by way of a special dispensation in view of the numbers involved with the object of ~~expediting~~ the implementation of the orders issued under the aforesaid circular. The above said Railway Boards circular also contains the statement indicating restructuring of Group C & D cadres. An extract of restructuring for the combined cadre of Station Master and Asst. Station Masters was also annexed to that Railway Board's letter dt. 29.7.1983. An internal circular for early implementation of the above instructions of the Railway Board was issued by the Zonal South Central Railway by its letter dt. 5.10.1983 (Annexure-II).

4. The applicant states that he is eligible for promotion to the grade of Rs.425-640 (RS) and Rs.455-700 (RS) in the above restructuring of Station Master/Asst. Station Master cadre. He was actually promoted to the grade of Rs.425-640(RS) consequent to the restructuring of the Station Master's cadre under proceedings dt. 6.7.1984 (Annexure-III). As Rs.455-700 was a selection post and as the applicant was also eligible for promotion to this grade due to the restructuring, he was asked to appear for the written and viva-voce tests in terms of para-3.1 of the Railway Board's circular dt. 29.7.1983, submits the respondents. As he failed to qualify in the viva-voce test, though he appeared for the written test on 30.12.1984 and qualified in the same, he could not be empanelled for the post of Asst. Station Master (ASM for short) in the grade of Rs.455-700 (RS) as stated by the respondents.

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5. The grades of Rs.425-640 (RS) and Rs.455-700(RS) 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 ASMs 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 (RS). 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 arisen 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-ASMs/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 (RS), consequent to the selection held in 1984 and 1985, he was not promoted to the grade of Rs.455-700.

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7. Aggrieved by the above reply of the respondents in not correcting the seniority list as requested by him, ^{praying} he has filed this OA/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 ~~Rxx~~ Rs.455-700 (RS) on par with his juniors with all attendant benefits including arrears of pay and promotion to the next higher post.

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 a selection post for which a selection held consisting of both written and viva-voce as per the procedure laid down in para-3.1 of the above quoted Railway Board's letter dt. 29.7.83. 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~~x~~ 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.330-560.

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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 submit that the promotion of the applicant to the post of Rs.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 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

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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 ^{an} "if/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 normal rules of promotion."

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."

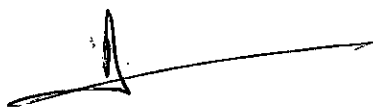
12. The respondents interpret that if a Railway servant becomes eligible for consideration to promotion due to restructuring, he will be promoted to the next higher grade, higher ~~than~~ one he is presently holding prior to restructuring by modified selection procedure in terms of para-3.2 eventhough 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 dated 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 the Railway Board dt. 29.7.1983 and the Railways internal circular dt. 5.10.1993 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~~ if the promotion

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to the next higher post, 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

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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 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 senior to him in the seniority list published on 29.5.1989.

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

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case of SMS who are in the cadre of 425-640 ~~their~~
~~is~~ 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 ~~max~~ 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 ~~w~~ exist for dispensing written examination
in a selection post if the selection is to be done both
by written and viva-voce tests. But relaxing both written
and viva-voce cannot be done without sacrificing the effi-
ciency of the organisation. Certain posts are classified
as selection posts to weed out inefficient employees.
Relaxation of selection rules even if the General Manager
is competent to do so cannot be resorted to unless there is

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an extraordinary situation to warrant the same. No such circumstance has been brought out by the applicant's counsel warranting relaxation. In this connection para-113 of Indian Railway Establishment Code was relied upon. This rule in our opinion has no relevance in this connection.

18. In the result, we find that the applicant having failed to fulfil the requirement of qualifying in the selection for promotion to the grade of 455-700, cannot demand promotion to that grade as a matter of right. His juniors who were promoted to the grade of 455-700 as on 31.12.1985 have been shown correctly above him in the seniority list. Hence, this OA deserves to be dismissed.

19. In OA 152/92, the applicant was working in the grade of 1400-2300 (RSRP) at Parle Vaidyanath Railway Station on the date of filing of the application i.e. 21.2.92. He joined initially as a Station Master in the grade of Rs.330-560 on 1.11.1980 and was regularly posted to that post on 27.3.1981. He also became due for two promotions viz. 425-640 and 455-700 due to the orders of restructuring of the cadre as per Railway Board's letter dt. 29.7.1983. He was given proforma fixation of pay from 1.8.1982 in the grade of 425-640 (RS). But that was not implemented as the applicant was undergoing punishment of withholding of increment for the period 1.7.1982 to 1.7.1984 in the grade of 330-560. He was further debarred for train passing duties for two years from 1.12.1984 and posted as Senior Signaller. After completion of the above punishments, he was given ~~with retrospective effect~~ proforma fixation of pay with effect from 1.8.1982 and promotion with effect

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from 1.8.1983 in the scale of 425-640 (RS). His pay in the revised scales of 1400-2300 was also refixed on that basis. It is further stated by the learned counsel for the respondents that he was called for selection to the grade of 455-700 against the roster point for S.C. under the restructuring orders as this was a second promotion to him from his basic grade of 330-560, he having been given the first promotion to the grade of 425-640 under modified procedure. It is further submitted by the respondents that the applicant was called for written test on 21.10.1984 and on various dates and finally on 6.1.1985. In spite 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 without being subjected had to be selected~~ 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.No.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

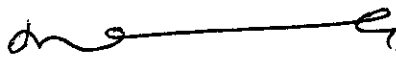
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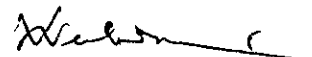
for second promotion if that grade to which the railway servant is to be promoted as a second promotion due to restructuring of the cadre is a selection post.

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

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



(R. Rangarajan)
Member (Admn.)



(V. Neeladri Rao)
Vice Chairman

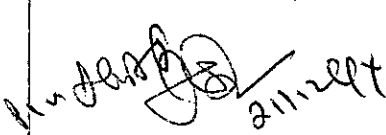
Dated 9th Dec., 1994.


Deputy Registrar (P) CC

To

1. The General Manager, S.C.Rly, Union of India, Railnilayam, Secunderabad.
2. The Divisional Railway Manager (Pers) (BG)
S.C.Rly, Secunderabad Division, Opp: Railnilayam, Sec'bad.
3. The Senior Divisional Operating Superintendent (BG)
S.C.Rly, Secunderabad Division, Opp: Railnilayam, Sec'bad.
4. One copy ⁺¹⁼² to Mr. G. Ramachandra 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. One copy to Library, CAT. Hyd.
8. Copy to All Reporters as per standard list of CAT. Hyd.
9. One spare copy.

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21/12/94