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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD  
O.A.No. 741 of 1992

Between:

M.P. Deenadayalan

Applicant

and

The Chief Personnel Officer,  
S.C.Railway, Secunderabad and  
others.

Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS

I, T.Prabhakaran S/o Late P.Narayana Menon aged about 56 years, Occupation: Government Service, do hereby affirm and state as follows:

1. I am working as Divisional Personnel Officer/I, Secunderabad (Broad-gauge) Division of South Central Railway 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 applicant is put to strict proof of all such averments except those that are specifically admitted hereunder:-

At the outset it is submitted that the application is premature for the reason that the prayer of the applicant is for a direction to the respondents to regularise his services as Chief Clerk from the date when Sri Lakhpatti Rao is eligible for being promoted as Office Superintendent in the reserved quota. From this prayer it is clear that when Sri Lakpati Rao has got promotion as Office Superintendent only then the applicant herein will get cause of action to file this O.A.

Attested

T. Prabhakaran

मुख्य कार्यालय अधिकारी (O. A.)  
S. C. Rly. Secunderabad  
Asst. Personnel Officer (EC)  
S. C. Rly. Secunderabad

21/1/93  
DEPONENT

मुख्य कार्यालय अधिकारी (O. A.) / नियमित  
Divl. Personnel Officer / S. C. Rly. SC.  
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It may be mentioned here that the said Lakpati Rao has filed OA 624/92 praying this Hon'ble Tribunal for a direction to the respondents therein to regularise his service as Chief Clerk from the date when he is eligible for promotion under upgradation scheme i.e., 1.1.1984 and to give him promotion as Office Superintendent on the basis of reservation as Scheduled Caste in the roster point. The said Lakpati Rao is not yet promoted as Chief Clerk on regular basis and he has to appear for the selection for the post of Chief Clerk and unless he is promoted as Chief Clerk on regular basis he cannot be entitled for a promotion for the post of Office Superintendent. Therefore, it is clear that unless the said Lakpati Rao is getting a relief in OA 624/92, applicant in the present OA cannot get any cause of action for his grievance. Therefore the O.A. is premature and the same is liable to be dismissed.

It is also submitted that O.A. is not maintainable for the reason that the applicant is seeking plural relief in this O.A. Admittedly the prayer of the applicant is that he has to be promoted as Chief Clerk from the date when Lakpati Rao is eligible for being promoted as Office Superintendent in the reserved quota. This means that the applicant is seeking a relief not only for himself but also for Sri Lakpati Rao. Therefore the present application is not maintainable and deserves to be rejected.

The brief history of the case is submitted as under:

The applicant who belongs to SC community was appointed as Jr.Clerk and posted to Sr.DCM's Office, Secunderabad on 02.3.1972. He was later promoted as Sr.Clerk on 01.10.80.

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*Govt. of Andhra Pradesh (A. P.)*  
D. P. Rly. Rly. Officer  
Asst. Personnel Officer  
S. C. Rly. Secunderabad

मंडल कर्मिक अधिकारी, द. प. र. / सिक्काद.  
Divl. Personnel Officer / S. C. Rly. SC.  
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The composite Secunderabad division was bifurcated into SC/BG and HYB/MG divisions with effect from 17.11.77. When staff were asked to exercise options, the applicant opted for MG Division. This option was given when third chance was offered. However, the third chance of option was quashed by the Hon'ble Tribunal in T.A. No.592/86 (on the file of CAT/HYB) W.P.No.7155/83 on the file of H.C. of A.P.), the applicants 2nd time option became final which was to BG Division.

When the Ministerial Cadre restructuring scheme was introduced by Railway Board with effect from 1.1.84, the eligible staff were given promotions without conducting selection wherever prescribed, as one time dispensation. The applicant who was working as Sr.Clerk, however, did not come up for promotion as Head-Clerk due to his seniority position. However, the applicant contends that had his senior employee by name P.Lakpathi Rao (SC), Head-Clerk been promoted as Chief Clerk with effect from 1.1.84 against SC Point, the applicant could have been promoted as Head-Clerk in the resultant vacancy. But there was already one SC candidate by name Sri S.Balakrishna working as Chief Clerk (Office Superintendent Grade.II) and hence taking into consideration the total strength of Chief Clerks, no SC point did arise. Therefore, question of offering one post on SC roster point to Sri P.Lakpati Rao does not arise and consequently the claim of the applicant for promotion against resultant vacancy is not tenable. In fact Sri P.Lakpati Rao has filed OA No.624/92 before the Hon'ble Tribunal claiming promotion as Chief Clerk (Office Supdtt.,Gr.II) and further consequential benefits, against which a detailed counter was already filed denying the claims. The said O.A. is pending disposal.

Attested.

*U. N. Raff*

रेलवे कार्यक अधिकारी (स. एस.)  
ग. एस. एस. रिक्रूटमेंट  
Div. Personnel Officer (RCA)  
S. C. Rly., Secunderabad

मंडल कर्मिक अधिकारी, द. म. रे. / सिक्कावाद  
Divl. Personnel Officer / S. C. Rly. S. C.

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Under these circumstances, the claim of the applicant for promoting him as Head-clerk with effect from 1.1.84 against upgraded/resultant vacancy and consequential benefits was not considered.

In reply to para 6 it is submitted that:

(a) The following are the service particulars of Sri M.P. Deenadayalan (SC), Head-Clerk, Sr.DCM(BG)/O/SC:-

Date of birth 12.8.1945

Date of appointment. 02.3.1972

Date of promotion as Sr.Clerk. 01.10.1980

Date of promotion as Head Clerk 11.9.1985

It is submitted that his prayer for regularising his services as Chief Clerk (OS Gr.II), Scale Rs.1600-2660 (RSRP) from the date when Sri P.Lakpati Rao (SC) who is an applicant in O.A.No.624/92 is eligible for being promoted as Office Superintendent Gr.I Scale Rs.2000-3200(RSRP) in the reserved quota and give him all consequential benefits is not factually correct. The posts of Office Superintendent Gr.I are controlled by Headquarters Office and filled on the basis of seniority-cum-suitability. Sri Lakpati Rao is not a regularly selected candidate for the post of Chief Clerk (Office Supdt.,Gr.II) as submitted in the counter in O.A.No.642/92 before the Hon'ble Tribunal and hence Sri M.P.Deenadayalan (SC) is not entitled for promotion in his place (applicant) in OA.642/92).

(d) It is a fact that Sri M.P.Deenadayalan (SC) while working as Sr.Clerk had opted to HYB/MG Division in accordance with 3rd option as per CPO's Letter dated 12.8.83. Further, he who was an optee to HYB/MG as Sr.Clerk, has submitted application requesting to treat his option as cancelled as having accepted promotion as Head Clerk from 11.9.85 in SC (BG)Division.

Attested

U. N. Lappu  
लोकपाल अधिकारी (स. व. व.)

प. ए. वैदो. विवराबाद  
गोपनीय उपायकर्ता (BG)  
S. C. Rly. Secy.

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नाम के विक्रम अधिकारी, द. म. र. / सिक्कावाद  
Div. Personnel Officer / S. C. Rly. SC.  
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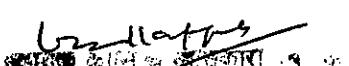
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This option was given when third chance was offered and however, the third chance of option was quashed by the Hon'ble Tribunal in T.A. No.592/86, the applicant's 2nd time option became final which was to BG Division.

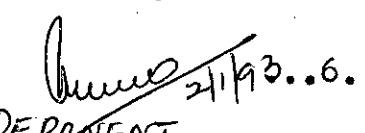
(e) The averment made by the applicant that he is entitled for being promoted as Head Clerk from 1.1.84 against reservation is not correct. The short fall against reservation was filled ~~by~~ in by promoting Sri D.Prabhakaran, belonging to SC Community, and senior to the applicant, from 1.1.84 as Head-clerk duly computing the number of reserved community candidates actually available as on 1.1.1984 to achieve 15% and 7½% for SCs and STs respectively on the total number of posts (13). It is true that he got promotion as Head-Clerk from 11.9.85 in a vacancy on the basis of his own seniority, as it is a non-selection post.

(f) The averment made by the applicant is not factually correct. It is true that 40 point community roster was provided for promotions in each category. Roster Points reserved for 'SC' community were 1,8,14,22, 28 and 36 in the 40 point roster. Sri P.Lakpati Rao (SC) was working as Chief Clerk (OS Gr.II) on adhoc basis subject to selection against the vacancies arising after 1.1.84. The applicant's contention that had his senior employee by name Sri P.Lakpati Rao (SC) Head Clerk been promoted as Chief Clerk (OS Gr.II) with effect from 1.1.84 against SC point and then as OS Gr-I, the applicant could have been promoted as Chief Clerk (OS Gr.II) in the resultant vacancy. But there was already one SC candidate by name Sri S.Balakrishna working as Chief Clerk and hence taking into consideration the total strength of Chief Clerks (OS Gr.II), no SC point did arise. Therefore, question of offering one

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D. S. Rao, Secunderabad  
Asst. Personnel Officer  
S. C. Rly., Secunderabad

  
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मंदिर के विकासी, द. स. रे. / सी. रल्य.  
Divl. Personnel Officer / S. C. Rly. SC.

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post on 'SC' roster point to Sri P.Lakpati Rao does not arise and consequently the claim of the applicant Sri M.P.Deenadayalan for promotion against resultant vacancy is not tenable. In fact Sri P.Lakpati Rao has filed O.A.No.642/92 before the Hon'ble claiming promotion as Clerk Clerk (OS Gr.II) and further consequential benefits, against which a detailed counter was already filed denying the claims and the said O.A. is pending disposal.

(g) The posts existing as on 1.1.84 and the posts available due to restructuring scheme with effect from 1.1.84 were to be filled on simplified procedure based on scrutiny of service records without holding any written test or viva-voce as one time dispensation ordered by the Railway Board. Accordingly, the posts were filled in by the seniormost Head-Clerks as Chief Clerks (OS Gr.II) subject of course to final decisions in court cases pending before Supreme Court, High Court or Central Administrative Tribunals.

The vacancies of Chief Clerks (OS Gr.II) arising after 1.1.84 are to be filled by a process of selection comprising of written test followed by viva-voce. It is true that selection could not be conducted for the posts that arose afterwards in view of clarification sought from Hd.Quarters and in view of pending court cases. Finally, written test was held on 25.7.1992 for filling up of the vacancies of Chief Clerks (OS Gr.II). As such the averment made by the applicant is not correct. The applicant is given opportunity to participate in the selection which he has not appeared for which he produced Private Medical Certificate.

Attested

Ullat  
कर्मचारी अधिकारी  
D. M. Rly. Secunderabad  
Asst. Personnel Officer, Rly.  
C. Rly., Secunderabad

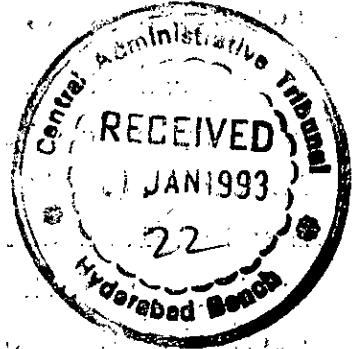
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मंडळ कार्पोरेक्ट अधिकारी, द. म. र. / विकास  
Divl. Personnel Officer / S. C. Rly. SC  
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for the C.A.T.  
Hyd Bench

OA 5741/92

Counter Affidavit



Received  
J. Saree  
10/1/93

Filed by:-  
N. R. Devi  
S. C. Sali