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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A. NO. 85 OF 1993.

Between:

J. Rankote

... Applicant

And

Union of India represented by
General Manager, South
Central Railway, Rail Nilayam,
Secunderabad and two others. ... Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF ALL THE RESPONDENTS.

I, M. Satyanandam, S/o. Late Veeranna, aged
56 years, occupation - Government service, do hereby
affirm and state as follows:-

1. I am working as Deputy Chief personnel Officer
looking after the Gazetted establishment matters,
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.

2. In reply to para 4 it is submitted that :

(a) to (c) The applicant was promoted as
Assistant Commercial Superintendent (Catering) in
Group 'B' Service on ad hoc basis with effect from
26-7-1980. Earlier he filed O.A.No.774/88 for a
direction not to give effect to the selection of


Attestor.


Deponent.

ASST. LAW OFFICER,
SOUTH CENTRAL RAILWAY
SECUNDERABAD

B. Yoganath as Assistant Commercial Officer and not to take him as In-service trainee and if any orders issued to this effect may be set aside and to direct the respondents to promote him as Group 'B' Officer and give him in-service training or in alternative set aside the panel published on 2-11-88 and hold fresh selection. While the said case was pending before this Hon'ble Tribunal, the applicant appeared for the regular selection and was empanelled in the year 1989. In the earlier selections for the post of Assistant Commercial Superintendent, he could not come out successful and hence could not be empanelled. Hence his services were regularised with effect from 19-9-89. The O.A.No.774/88 came up for hearing on 30-11-1990 and on a representation by the Counsel for the applicant that in view of the applicant's selection as Assistant Commercial Superintendent and his empanelment in the panel published on 20-9-89 and his ad hoc services has been regularised, further orders are not necessary in the matter, this Honourable Tribunal disposed of the said O.A. having become infructuous. The post of Assistant Commercial Superintendent in Group 'B' service, is a selection post. Unless and otherwise an employee comes out successful, he cannot claim regular promotion and his ad hoc service in such post cannot be taken into account for the purpose of seniority or any other benefits. As the applicant herein came out successful in the selection in the year 1989 and empanelled in the panel published on 20-9-1989, his services have been regularised with effect from 19-9-89.



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(d) Group 'B' officers are being considered for promotion to ad hoc Senior Scale in accordance with seniority-cum-suitability subject to vacancy position. The procedure laid down for filling up the vacancy in Senior Scale is as follows:-

- (i) First preference is given to such of the Group 'A' Officers who have completed more than 4 years Group 'A' service subject to fitness.
- (ii) If still vacancies are there, the second preference is given to such of the Group 'B' officers who have completed more than 6 years regular service subject to fitness.
- (iii) If no Group 'B' Officer completing 6 years regular service, is available, 3rd preference is given to such Group 'A' Officers completing more than 3 years service on charge allowance.
- (iv) If no Group 'A' Officer completing 3 years Group 'A' service is available, such of the Group 'B' officers who have completed more than 3 years regular service in Group 'B' service are to be considered.

In the instant case the turn of the applicant has not yet come for consideration to the ad hoc senior scale post since there are 28 officers senior to him and waiting for such promotions.

(e) As per records available, the representation dated 16-8-91 said to have been sent by the applicant has not been received in the office of the 1st or second respondents.


Attestor.


Deponent.

ASST. LAW OFFICER
COURT OF APPEALS
SECUNDERABAD

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3. In reply to para 5, GROUNDS, it is submitted that

(a) No junior to the applicant has been promoted to Senior Scale on ad hoc basis. Even officers who were regularly empanelled earlier to the applicant in the year 1981 and 1983 could not come up for consideration for senior scale ad hoc promotion. Hence, the question of failure on the part of respondent to consider the applicant's case for promotion does not arise.

(b) It is a fact that the applicant has been working as Assistant Commercial Superintendent (Catering) in Group 'B' Service on ad hoc basis from 26-7-80 whereas his services were regularised only consequent upon his empanelment in Group 'B' post by a positive act of selection with effect from 19-9-89. In order to interpolate one's name in the seniority list vis-a-vis others, date of regularisation is the criteria and the ad hoc services whatsoever rendered would be only fortuitous. The applicant, even though appointed on ad hoc basis w.e.f. 26-7-80 was only regularised in Group 'B' service w.e.f. 19-9-89 on his selection for regular promotion. His seniority is counted vis-a-vis other regular Group 'B' officers w.e.f. 19-9-89 only. It is a fact that the respondents in the Counter Affidavit filed in O.A. 774/88 have stated that the applicant was found fit in the selection conducted during June to September '89 and empanelled to Group 'B' posts of Assistant Commercial Superintendent and the panel was published on 20-9-89 and ad hoc services have been regularised. This statement does not indicate that his ad hoc services have been regularised retrospectively i.e., the date from


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ASST. LAW OFFICER,
SOUTH CENTRAL RAILWAY
SECUNDERABAD

which he is promoted on ad hoc basis. As per the procedure the promotion is to be regularised only from the regular empanelment and accordingly he was regularised only from 19-9-89. His promotion on ad hoc basis was not by way of any selection prescribed under rules but only on the basis of perusal of his Confidential Reports. Therefore any service rendered by him on ad hoc basis cannot be taken into account for the purpose of seniority. Where the appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority (1990(2)SLJ (SC) 40).

(c) It is submitted that no junior to the applicant in Group 'B' service has been given the benefit of promotion to senior scale on ad hoc basis.

(d) It is submitted that the procedure for consideration for promotion to the post of senior scale Group 'A' Service on ad hoc basis is stated supra. Hence whether the applicant has 26 years of unblemished record of service or otherwise has no relevance.

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 Court may be pleased to dismiss the O.A. with costs and pass such further and other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.

DEPONENT

Solemnly and sincerely affirmed
this 5th day of March 1993 and he
signed his name in my presence.

Before me



Attestor.

ASSY. LAW OFFICER
SOUTH CENTRAL ZONE
SECUNDERABAD

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH

AT HYDERABAD

O.A.NO. 85 OF 1993

Between:

J.Ramakote, &

.. Applicant

A N D

Union of India represented by
General Manager, South Central
Railway, Rail Nilayam, Secunderabad
and 2 others.

.. Respondents.

REPLY AFFIDAVIT FILED BY THE APPLICANT.

I, J.Ramakote, S/o Sri Chimpiraiah, aged 49 years, working as Assistant Commercial Superintendent (Catering), South Central Railway, Guntakal, now temporarily come down to Mijayawada, do hereby solemnly affirm and state as follows:

1. I am the Applicant herein and I am acquainted with the facts of the case. I have gone through the Counter Affidavit filed on behalf of the respondents herein and several contentions raised therein as incorrect, untenable and unsustainable.

2. It is true as stated in para 2 of the Counter Affidavit that I was initially promoted as Assistant Commercial Superintendent (Catering) in Group-B services on adhoc basis with effect from 26.07.1980. I state from the date of my promotion I was continued in the promoted post till my services were regularised in

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the said post in the year 1989. I state that I was promoted against a clear vacancy of the post of Assistant Commercial Superintendent (Catering). From the date of my initial promotion I had put in continuous service and also crossed the efficiency bar in the scale of pay of Assistant Commercial Superintendent. It is true I filed a case in OA No.774 of 1988 earlier and the same was disposed of on 30.11.1990 on a representation made by the Counsel for the Applicant ^{and} on the basis of the averments made in the Counter Affidavit therein that the Applicant was empanelled for Group-B services posts of Assistant Commercial Superintendent and the panel was published on 20.09.1989 and adhoc services have been regularised. I state that in the earlier case my plea was that when I was already working as Assistant Commercial Superintendent (Catering) as to why another person should be posted as Assistant Commercial Superintendent for in-service training. In as much as the respondents in the Counter Affidavit filed in OA No.774 of 1988 have stated that my adhoc services were also regularised it means ^{and} that I had also taken it as regularising my services with effect from the date of my promotion as Asst. Commercial Superintendent (Catering) on 26.07.1980. The averment made in para 2 of the Counter Affidavit that the earlier selections for the post of Assistant Commercial Superintendent, I could not come out successful and hence I could not be empanelled is not admitted and the respondent is put to strict proof of the same. I state that I had appeared for the written test in the year 1981 for selection to the posts of Assistant Commercial Superintendent (Catering) against the 75% quota

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the said post in the year 1989. I state that I was promoted against a clear vacancy of the post of Assistant Commercial Superintendent(Categing). From the date of my initial promotion I had put in continuous service and also crossed the efficiency bar in the scale of pay of Assistant Commercial Superintendent. It is true I filed a case in OA No.774 of 1988 earlier and the same was disposed of on 30.11.1990 on a representation made by the Counsel for the Applicant ^{and} on the basis of the averments made in the Counter Affidavit therein that the Applicant was empanelled for Group-B services post\$ of Assistant Commercial Superintendent and the panel was published on 20.09.1989 and adhoc services have been regularised. I state that in the earlier case my plea was that when I was already working as Assistant Commercial Superintendent(Catering) as to why another person should be posted as Assistant Commercial Superintendent for in-service training. In as much as the respondents in the Counter Affidavit filed in OA No.774 of 1988 have stated that my adhoc services were also regularised it means ^{and} that I had also taken it as regularising my services with effect from the date of my promotion as Asst. Commercial Superintendent(Categoring) on 26.07.1980. The averment made in para 2 of the Counter Affidavit that the earlier selections for the post of Assistant Commercial Superintendent, I could not come out successful and hence I could not be empanelled is not admitted and the respondent* is put to strict proof of the same. I state that I had appeared for the written test in the year 1981 for selection to the posts of Assistant Commercial Superintendent(Categing) against the 75% quota

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reserved for lower category and ~~in the month~~ I had passed the written test and appeared for viva-voce. But the results of the viva-voce was not intimated to me. I made several representations to higher authorities. But the said representations did not elicit any response.

3. The averments made in para 2 (d) of the Counter Affidavit relating to the procedure for promotion to adhoc senior scale is not disputed. But the contention that I have not ^{come} ~~gone~~ up for consideration is untenable and unsustainable.

4. In reply to averments made in para 2(e) of the Counter Affidavit that I made representations on 26.10.1989; 9.11.1989, 17.01.1990 and also on 16.08.1991 and the denial of ~~the~~ receipt of the representation dated 16.8.1991 is deliberate.

5. The contentions raised in para 3 (a) (b) (c) (d) of the Counter Affidavit are untenable and unsustainable. I state that the averment made by the respondents in the Counter Affidavit filed in OA No.774 of 1988 that adhoc services as Assistant Commercial Superintendent was regularised would clearly mean that my services were regularised from the date of my initial promotion to the said post. The reference to the Judgment Reported in 1990(2) SLJ at page 40 is not relevant as it is not applicable to my case. My promotion was not a stop-gap arrangement and I was continued without any reversion

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REPLY AFFIDAVIT FILED BY THE APPLICANT

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G.Ramachandra Rao
Counsel for the Applicant
3-4-498, Barkatpura Chaman
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