

(121)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

O.A. Nos. 719/93, 768/93 and 455/93

A.A. NO.

DATE OF DECISION 20-12-96

K.S.CHANDRASEKHAR AND ORS.

(PETITIONER (S))

M/s P.Krishna Reddy & G.Ramachandra

ADVOCATE FOR THE PETITIONER(S)

VERSUS

G.M. S.C.Rly, and others

RESPONDENT (S)

Mr.V.RAJESWARA RAO & V.BHIMANNA

ADVOCATE FOR THE RESPON-
DENT (S).

THE HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter ~~or not~~ ? yes -
3. Whether their Lordships wish to see the fair copy of the judgement ?
4. Whether the Judgement is to be circulated to the other Benches ?

Judgement delivered by Hon'ble SHRI R.RANGARAJAN, MEMBER (A)


HBSJP
M(J)


HRRN
M(A)

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NOS. 719-of-1993, -768-of-1993
AND-455-of-1993

DATE-OF-ORDER: ---19th---December, -1996

BETWEEN:

G.A. NO-719/93

1. K.S.CHANDRA SEKHAR,
2. C.NADHA MUNICHETTY,
3. N.BALAJI,
4. P.RAVI,
5. G.SIVAJI NAIDU,
6. R.ARUMUGHAM,
7. G.BHASKER,
8. V.CHENNA KESAVULU,
9. A.NAGESWAR,
10. P.KESAVULU,
11. SYED TURA BUDDIN,
12. B.MUNI RAJU,
13. S.MUNI RATNAM,
14. K.V.RAMANA,
15. J.V.RANGAIAH,
16. C.NAGARAJU,
17. P.PRABHAKAR RAO

.. APPLICANTS

AND

1. Union of India rep. by the
General Manager, South Central Railway,
Secunderabad,
2. The Chief Personnel Officer,
S.C.Railway, secunderabad,
3. The Deputy Chief Mechanical Engineer,
Carriage Repair Shop, S.C.Railway,
Tirupathi,
4. P.NARAYANA MURTHY,
5. S.YELLAIAH,
6. K.MARUTHI PRASAD,
7. M.MURTHY,
8. ABDUL RAHIM,
9. S.R.VENKATESAN,
10. SATYA RAJU,
11. Y.PARTHASARATHY,
12. HARIKUMAR,
13. P.MUNI BALAJI,
14. A.NAGARAJU

.. RESPONDENTS

O.A.NO.768/93

1. C.SREE HARI,
2. K.GURAVA REDDY,
3. P.BASHA,
4. M.NAGENDRA RAO,
5. K.MADHAVA,
6. K.VENKATARAMANA,
7. U.NARASIMHULU,
8. E.VENKATA KRISHNAIAH,
9. Sk. MAHAMED MUSA,
10. B.SRINIVASULU,
11. B.SRINIVASULU,
12. K.SUBBARAYUDU,
13. B.MADANA GOPAL,
14. P.SURYANARAYANA

.. APPLICANTS

AND

1. Union of India rep. by the
General Manager, South Central Railway,
Secunderabad,
2. The Chief Personnel Officer,
S.C.Railway, Secunderabad,
3. The Deputy Chief Mechanical Engineer,
Carriage Repair Shop, S.C.Railway,
Tirupathi,
4. P.NARAYANA MURTHY,
5. S.YELLAIAH,
6. K.MARUTIPRASAD,
7. M.MURTHY,
8. ABDUL RAHIM,
9. SR VENKATESAN,
10. SATHYA RAJU,
11. Y.PARTHASARATHY,
12. HARIKUMAR,
13. P.MUNNI BALAJI,
14. A.NAGARAJU

.. RESPONDENTS

O.A.NO.455/93

1. Md. HANEEF,
2. S.NARASIMHA RAO,
3. P.KUMAR,
4. Sd. SHAFI AHAMED,
5. P.LAKSHMI NARAYANA,
6. T.VIJAYA BHASKAR REDDY,
7. P.SURESH,
8. V.PANAKALU,
9. Y.UMAKANTHA RAO,
10. A.BALASUBRAMANYAM,
11. N.CHELLA REDDY,
12. N.KOTESWARA RAO,
13. T.VENKATA KRISHNA,
14. N.SUBRAMANYAM,

R

D

15. G.SUDHAKARA,
16. N.NOWSHAD,
17. Md.CHANDU SAHEB,
18. K.MOHAN KRISHNA,
19. K.KRISHNAIAH.

.. APPLICANTS

AND

1. Union of India rep. by the
General Manager, South Central Railway,
Secunderabad,
2. The Chief Personnel Officer,
S.C.Railway, Secunderabad,
3. The Deputy Chief Mechanical Engineer,
Carriage Repair Shop, S.C.Railway,
Tirupathi,
4. P.NARAYANA MURTHY,
5. S.YELLAIAH,
6. K.MARUTI PRASAD,
7. M.MURTHY,
8. ABDUL RAHIM,
9. S.R.VENKATESAN,
10. SATHIYA RAJU,
11. Y.PARTHASARATHY,
12. HARI KUMAR,
13. P.MUNI BALAJI,
14. A.NAGARAJU.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: SHRI P.KRISHNA REDDY in OA
Nos.719/93 and 768/93
SHRI G.RAMACHANDRA RAO, in O.A.
No.455/93

COUNSEL FOR THE RESPONDENTS: SRI V.RAJESWARA RAO, Addl.CGSC
for R-1 to R-3 (in all 3 OAs)
Sri K.SUDHAKAR REDDY for R-4 to
R-14 (In all the three OAs)

CORAM:

HON'BLE SHRI R.RANGARAJAN, ADMINISTRATIVE MEMBER

HON'BLE SHRI B.S.JAI PARAMESHWAR, JUDICIAL MEMBER

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.P.Krishna Reddy, learned counsel for the
applicants in OAs 719/93 and 768/93, Mr.G.Ramachandra Rao,
learned counsel for the applicants in OA 455/93 and

R

D

(18)

4

Mr.V.Rajeswara Rao, learned standing counsel for the respondents in all the three OAs.

2. The flagged documents in the confidential file No.TR/P 563/DR/Skilled Mech.(Con.) were also perused.

3. The contentions in all these OAs are same so also the relief asked for. Hence all the three OAs are disposed of by the common order.

4. The applicants in all these three OAs were empanelled candidates empanelled in pursuance of the Notification No.1/84 dated 18.1.84 for the post of Skilled Artisans (Group 'C') in Carriage Repair Shop, South Central Railway at Tirupathi.

5. The applicants numbering 17 in OA 719/93 and the applicants numbering 14 in OA 768/93 are working as Diesel Cleaners in the Diesel Loco Shed at Kazipet of South Central Railway. The applicants numbering 19 in OA 455/93 are working as Khalasi Helpers in Diesel Loco Sheds, Gooty in Guntakal Division, South Central Railway.

6. The facts of this case which are not disputed are as follows:-

All the applicants in all the three OAs applied for the post of Skilled Artisan (Group 'C') in various trades in the Tirupathi Carriage Repair Shop in pursuance

JR

1

of the Employment Notification No.1/84 dated 18.1.84 for recruitment from the open market. In response to the said notification, selection was conducted and a panel of 378 candidates was published on 21.3.87. Out of this, only 220 candidates were appointed in different trades. Though the life of the panel was only one year, the same was extended from time to time by the competent authority and thus the panel was current upto 19.9.91. Inspite of extension, 150 candidates from the said panel could not be appointed during the life of the panel. The applicants in these three OAs are those who are not appointed. As it was felt that the left out candidates could not be appointed during the pendency of the panel of Artisan Grade-III, an offer for alternative appointment for filling up the vacancies in Group 'D' (Unskilled post) in the Diesel Sheds of Guntakal Division i.e, at Gooty and Guntakal, was sent to them by the letter No.TR P 563/Vol.II dated 15.4.91 (Annexure-I in OA 455/93). The terms and conditions were also indicated in that letter. The condition Nos.2, 3, 8 and 9 are important to be noted for the development of this case. They read as below:-

"(2) Once you have accepted the offer for appointment in group-D and appointed as such in Guntakal division you forgo your eligibility for appointment in skilled artisan category and you will have no right or cause for consideration for the appointment for the post of skilled Gr.III either in

R

A

the Carriage Repair Shop at Tirupati or elsewhere in Railways.

(3) After accepting the appointment in Group-D category you shall seek your further progress from that grade as Diesel shed now and then per the avenue ^{for} ~~from~~ promotion as prevalent in that Diesel Shed now and then.

xxxx xxxx xxxx xxxx

(8) Consequent to your decision not to accept the appointment for Group D category as enumerated above it should be noted that you shall have to wait for your turn for appointment as skilled Artisan gr.III in CRS within the currency of the panel subject to vacancies arising during the currencies for direct recruitment. The life of the panel has expired on 19.9.1990¹ but it is under consideration for extension if situation demanded. But there is no certainty.

(9) You shall have no right or claim for appointment for the post of Skilled Gr.III after the expiry of the currency of the panel. Neither you can subsequently make a request for consideration for posting in Group-D category.

7. It is stated that the applicants gave their willingness for that post in Group-D. But it is stated that even after they gave their willingness, they were not

B

M

appointed even in Group-D. While the matters stood thus, a notification was issued for filling up of the Group-D posts of Khalasis (Unskilled) calling for candidates from the Employment Exchange and Zilla Sainik Welfare Board at Chittoor and Tirupathi as it was proposed to increase the out turn from 60 to 70 units in Tirupathi CRS. Aggrieved by this notification No.1/91 for recruitment to Group-D when they had given their willingness for absorption in Group-D in pursuance of the letter dated 15.4.91, the applicants and others filed OA No.1056/91 and batch on the file of this Tribunal. Those OAs were disposed of by this Tribunal directing that as and when Group-D posts in outsider quota become^U available at CRS, Tirupathi or elsewhere in Guntakal Division, the applicants should be considered first before considering any other cases in the order of their rank. The Review Application was also filed by ^{the} respondents in the batch case which was also dismissed with certain observations in regard to the right of the applicants to make a request for consideration for posting them in Group-D after the expiry of the panel. It is also observed in that Review Application that there ~~is~~ no right ^{was} accruing to the OA applicants for Group-C posts. It is stated that after the disposal of that OA and RA, they were appointed against Group-D posts. It is also stated that those who are posted to Diesel Sheds, Gooty as Khalasis were promoted as Khalasi Helpers within a period of six months. Though there were queries from M.Ps and others in regard to their absorption as Skilled Artisans as per their panel position dated 21.3.87, they were informed that the

R

1

appointment of the left out 150 candidates from the panel can be considered as and when additional posts in the Workshop are sanctioned which is under examination. The applicants contend that on the basis of those letters which are enclosed as Annexure IV and V of the OA ^{to} ~~in~~ OA 455/93, the Railway Board had indirectly accepted the responsibility to appoint them as Skilled Artisans and hence at this stage they cannot retrace their steps especially when further notification dated 17.3.93 was issued for recruitment to Skilled Artisans once again from the open market. In the meantime, the Railway Board vide letter No.92/M(W)814/54 dated 29.12.92 issued instructions to improve the outturn of POH of Broad Gauge Coaches from 70 to 100 during the year 1993-94. In view of the above instructions, necessary posts got concurred under Group-C and Group-D for increasing the outturn of 30 units. To fill up those vacancies, directions were issued by R-1 and R-2 to initiate recruitment process for Skilled Artisans (Group-C) for mechanical and electrical departments of Tirupathi CRS. A notice No.TR/P-563/93/DR dated 17.3.93 (Annexure VI in OA 455/93) was issued calling for applications from the eligible wards of CRS employees for consideration for selection/recruitment of trainee Skilled Artisans in the scale of pay of Rs.950-1500 (RSRP) along with the candidates sponsored by the Employment Exchange Office, Chittoor. A notice bearing No.TR/P. 563/Skilled/93/2 dated 14.4.93 (Annexure-VII in OA 455/93) was also sent to those who were sponsored candidates from the Employment Exchange directing them to submit their

23

applications in the prescribed format issued by R-3. The applicants in these OAs submitted representations to R-2 and R-3 that they should be appointed first in view of their empanelment in pursuance of the notification No.1/84 before appointing others against the notification issued in 1993. It is stated that no reply was received from R-2, and R-3 even refused to take the representations.

8. This OA is filed praying for direction to the respondents to absorb the applicants herein who were empanelled in pursuance of the notification No.1/84 published on 21.3.87 in the post of Skilled Artisan Group-C in CRS, S.C.Railway, Tirupathi before absorbing any outsider in pursuance of the notification No.TR/563/SK/93 DR dated 17.3.93 (Annexure VI in OA 455/93) and the notification No.TR/P.563/Skilled/93/2 dated 14.4.93 (Annexure VII in OA 455/93) on the file of R-3 herein with all consequential benefits.

9. A reply has been filed and a rejoinder has also been filed in OA 455/93. The reply filed by the respondents in all the three OAs are on the same lines. The respondents submit that initially the expected outturn from Tirupathi CRS was of the order of 200 units though initially it was sanctioned only to the extent of 60 units. Subsequently it was increased to 70 units and thereafter it was proposed to be increased to 100 and further. When the applicants were empanelled in pursuance of the notification No.1/84, it was expected that out turn will reach upper

R

D

(24)

limit. Inspite of this panel having extended from time to time till September 1991, the expected out turn had not materialised and hence the full panel was not exhausted. However, the applicants were given appointments in Group-D without any right for them for being considered in Group-C thereafter. Having accepted that condition as extracted above, the applicants cannot now ask for a post in preference to the others selected in pursuance of the notifications dated 17.9.93 and 14.4.93. Even those empanelled in 1993 panel were given only Group-D posts and none of them were given Group-C posts. Hence the applicants have no case and the OAs are to be dismissed. The respondents also submit that the applicants herein earlier filed OA 1056/91 for a similar direction and hence the present OA is hit by resjudicata. A contention is also advanced by the respondents in regard to the limitation in filing the OA.

10. Before we examine the issue in depth, we find that the notification issued in 1984 under the notification No.1/84 is too premature in assessing the vacancies for the Skilled Artisans. At that time, the workshop was in nascent stage as can be seen from the averments made in the reply. No definite approval for having an out turn of 200 units was available except contemplation of having provision for repair to the extent of 200 units. At that time, at best, it ^{could}~~can~~ be presumed that only 60 units were sanctioned. Subsequently, it was sought to be increased to 70 units in 1991 and 100 units in 1992. Thus the initial

✓

assessment of Artisan requirement in the year 1984 appears to be in the very high side without giving any thought of achieving that target. Even the panel issued in pursuance of the notification No.1/84 was published in September 1987 i.e, after a lapse of three years. Thus it appears that the respondents were contemplating in regard to the future out turn but not a definite decision was taken even in the year 1987. When that be the position, it is for the respondents to judicially examine the requirement at the time of issue of the notification in 1984 or at least at the time of publication of the panel in the year 1987. Without giving much weightage to the requirement, hurriedly the panel of 378 candidates was published in 1987. In spite of best efforts and keeping the panel open till September 1991, 150 candidates from that panel could not be absorbed and they were absorbed in Group-D posts. This assessment in 1984 notification, in our opinion, was done without paying much attention to the requirement which resulted in unnecessary litigation later. When the out turn was sought to be increased from 60 to 70 units, the respondents hurriedly issued the notification for 40 unskilled Khalasis in the CRS. When alternative appointments were already offered to the left out 150 candidates of 1987 panel as per the letter dated 15.4.91, the respondents should have thought whether it is essential to issue the notification No.1/91 for recruitment of Khalasis. This action of the respondents in issuing the notification No.1/91 for Khalasis provoked the applicants to file OA 1056/91 and as per the directions, the

Re

D

26

12

applicants herein were to be posted in Group-D posts against the outsider quota before absorbing others on out turn basis. Though the respondents submit that the applicants could not be appointed in Group-D posts in pursuance of the offer of appointment issued to them by the letter dated 15.4.91 due to the pressures from the employees' unions and others, this reason cannot be taken ^{at} on the face value. The respondents having known the position prevailing at that time should have consulted the appropriate machinery and ^epersuaded them to appoint the applicants in the alternative appointment in pursuance of their letter dated 19.4.91 instead of issuing a fresh notification for direct recruitment of Khalasis. In any case because of the Tribunal's directions, the applicants were absorbed in Group-D posts. Thus the respondents appear to have failed in proper assessment of the situation in issuing the notification for Khalasis in the year 1991. It is stated that the outturn is to be increased from 70 to 100 units which necessitated the issue of the impugned notifications dated 17.3.93 and 14.4.93 for preparing a fresh list of Trainee Skilled Artisans in Group-C. But this proposal also had not materialised and those selected in pursuance of the impugned notification were also later appointed in unskilled posts. Thus at each and every step, the respondents, in our opinion, failed to assess the requirement for filling up the post of Skilled Artisans and Khalasis realistically and thereby created unnecessary problems leading to institution of litigations.

R-

11

27

11. We will now take up the contentions of the applicants in resisting the impugned notifications dated 17.3.93 and 14.4.93 for recruitment of trainee Skilled Artisans in Group-D. It is stated for the applicants that the fresh notification as above for recruitment of Trainee Skilled Artisans was motivated to favour certain candidates in preference to those who were selected and empanelled in 1987. As the panel of 1987 was issued on the basis of the assessed available vacancies, those vacancies cannot disappear all of a sudden and hence the empanelled candidates of 1987 panel could have easily been absorbed against those vacancies without resorting to fresh recruitment of Skilled Artisans. In their opinion, the left out 150 candidates also could have been appointed within the currency of that panel which expired in September, 1991.

12. The above contention was examined. As indicated earlier, the assessment of vacancies in our opinion in 1984 is not at all realistic. When the workshop was intended to repair only 60 units, it is not possible to accommodate all the candidates who were selected on the premise that the number of units to be repaired will be 200. The assessment, in our opinion, is only unrealistic. The respondents could have easily ^{phased} ~~faced~~ out their recruitment programme for Skilled Artisans in stages as and when required. The time taken for issue of the panel for 1984 notification is three years. The respondents on that basis submit that the recruitment process takes quite a long time and hence they kept that long panel. But this reasoning

R

A

does not appear to be ~~in order~~ ^{Sound}. If the entire organisation could have geared up processing time after notification was issued could be reduced drastically and the selected candidates could be brought in position within a period of 9 months to one year. The required number of staff ~~for~~ ^{at} each stage of increase in production could have been assessed in stages and the selection made accordingly thereby avoiding discontentment of the empanelled candidates. Issue of long panel also could have been avoided.

13. Whether issue of such a long panel in pursuance of the notification No. 1/84 will entail the applicants to insist for absorption in the Skilled Category even after the expiry of the panel is the point to be considered.

14. It is evident from the material produced and on ^epursuing the confidential file referred to above, we are of the opinion that the initial assessment in 1984 was wrong and that the targetted out turn had not been achieved even by the year 1993. When the targetted out turn had not been achieved, the applicants cannot insist that they should be appointed against the Skilled Aritsan posts even if there ^{was} ~~is~~ no work load. Hence the contention of the applicants cannot be upheld.

15. In this connection, we will like to cite the observation made by the Supreme Court reported in 1996 SCC (L&S) 683 (Union of India and others v. K.V.Vijeesh). In

R

1

that reported case, a select list for the post of Diesel Assistant was prepared after the written examination and viva voce. Subsequently, in view of impending absorption of Steam surplus staff, a policy decision was taken to reduce the number of vacancies and consequently certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. When the selectees (Respondent in the cited judgement) approached the Ernakulam Bench of the Tribunal, the Tribunal directed the respondent to consider them for appointment as Diesel Assistant in any existing or next available vacancy on the basis that his name had been recommended by the Railway Recruitment Board for appointment. When that decision of the Tribunal was challenged in the Supreme Court by filing SLP by the respondents in that OA, the Supreme Court observed, "in the absence of any such rules governing appointment of the respondent, the Tribunal was not justified in passing the impugned order". It was further held that in such circumstances, denial of appointment to persons removed from the select list held not arbitrary or discriminatory. In the present case, though there were no surplus candidates, selectees in the final select list could not be fully absorbed as the out turn has not picked up to the expected level. Hence, the observations of the Apex court in the above referred case is equally applicable in the present case also.

16. The respondents contend that the present case is barred by resjudicata. Earlier OA (No.1056/91) was filed



30

when they were not absorbed in Grup-D even after the offer for alternative appointment was given to them and action was taken for direct recruitment from the open market. No challenge was made earlier against the recruitment of trainee Skilled Artisans in pursuance of the impugned notification issued in 1993. Hence we do not consider that this case is barred by resjudicata. Hence this contention of the respondents has no substance. The contention of limitation raised by the respondents in view of the above also does not appear to be ^{acceptable} in order. However, for the reasons stated above in para 15 supra, the OA is liable only to be dismissed.

17. Though the applicants submit that their case should be considered for appointment in 1993 as Skilled Artisans even after the lapse of their panel in September, 1991 instead of issuing the impugned notification in 1993 for recruitment of Skilled Trainee Artisans, it is not understood why they have not challenged the action of the respondents when their panel was allowed to lapse in 1991. The applicants should have challenged when their panel was allowed to lapse and obtained a direction to keep that panel open. But they failed to do so and allowed the panel to lapse. When the panel had lapsed, none can demand for recruitment as per the lapsed panel. When questioned why the applicants did not take action to revive the panel when it was allowed to lapse, there was no satisfactory answer from the learned counsel for the applicants. The applicants have no right to demand appointment on the basis

Jr

W

of the lapsed panel.

18. The applicants have lost nothing by issue of the impugned notification in 1993. It is stated for the respondents that even those who were empanelled in pursuance of the impugned notification issued in 1993 were not appointed in Group-C posts but were given only Group-D posts. The panel of 1993 had also lapsed. Hence there is no force in the contention of the applicants to consider them against the vacancies for which 1993 panel was formed, due to the later developments as mentioned above.

19. The applicants further pray that they have crossed their maximum age for direct recruitment and hence it will be difficult for them to compete in future for direct recruitment. In that view, the applicants submit that they should be given preferential treatment as and when direct recruitment takes place in future. When asked for the detailed nature of preferential treatment to be given to them as and when direct recruitment takes place in future, the learned counsel for the applicants submitted that the age relaxation may be given to them in view of their empanelment earlier in 1987. This is a point for consideration by the respondents. The Tribunal cannot give any direction in this connection dehors the rules. However, if the respondents have power to relax the age requirement, they may consider the request in accordance with the rules. In that connection, the applicants at that appropriate time may file a suitable representation to the

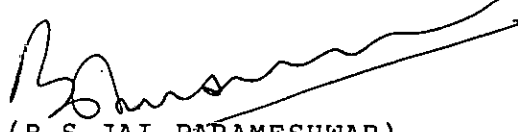
Dr


D

32

appropriate respondent for giving them necessary relaxation of age. The respondents, in our opinion, will no doubt take a decision in accordance with the rules in regard to their request.

20. In the result, ^{all these are} the ~~OA~~ ^{OA's} is dismissed as having no merit subject to the observations in Para 19 supra. No order as to costs.


(B.S. JAI PARAMESHWAR)
JUDICIAL MEMBER
29/12/96


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER

DATED: - ^{29/12/96} ~~28~~ - December, - 1996

vsn

Ambedkar
29.12.96
D.R.(J)