

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

OA No. 158/93

Date of judgement: 2-3-93.

Between

Shri D. Subbarayalu : Applicant

And

1. Union of India rep. by the
General Manager, South Central
Railway, Rail Nilayam,
Secunderabad.

2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad

: Respondents

COUNSEL FOR THE APPLICANT : Shri R. Briz Mohan
Singh

COUNSEL FOR THE RESPONDENT : Shri N.R. Devaraj

CORAM

Hon'ble Justice Shri V. Neeladri Rao, Vice-Chairman

Hon'ble Shri R. Balasubramanian, Member (Admn.)

(Judgement of the division bench delivered by Hon'ble
Justice Shri V. Neeladri Rao, Vice-Chairman.)

Heard Shri R. Briz Mohan Singh, learned counsel
for the applicant and Shri N.R. Devaraj, learned standing
counsel for Railways.

The applicant applied for the post of Law Assistant
on 12-10-92 in South Central Railway. By that ^{date} _{scale} he was in
the ~~scale~~ of Rs.1400/-2300/-. The last date for the receipt
of applications was 15-10-92. The applicant was promoted
as office Superintendent/Gr.II in the pay scale of
Rs.1600/-2660 on 19-1-93. The ^{He} applicant passed the written
test for the post of Law Assistant which was conducted on

2-1-93 and he was called for the interview on 17-2-93.

The contention of the applicant is that as he was in the pay scale of Rs. 1600/-2660 by the date of his interview, he should be treated as an applicant in the scale of 1600/-2660 for the fixation of inter se seniority for the post of Law Assistant and hence he prayed for declaration that he is entitled to be included in the panel treating him ^{as} belonging to the pay scale of Rs.1600/-2660 with all consequential benefits such as appointment as a Law Assistant in the grade of Rs.1600/-2660/- and for other benefits which need not be narrated for the disposal of this OA.

When the applicant made a representation dated 15-2-93 even before his interview praying for considering him as an applicant in the pay scale of Rs.1600/-2660, the Chief Personnel Officer (Respondent 2) informed the applicant by letter dated 16-2-93 as under:-

" Shri D.Subbarayudu, may be advised that the inter se-seniority for the purpose of selections is only based on the regular status of the volunteer on the last date for submission of applications volunteering for consideration, or as specifically indicated."

It is submitted for the applicant that Rule 321 of Indian Railway Establishment Manual, which is relevant, lays down that the length of service has to be taken into consideration when a post (selection as well as non-selection) is filled by concerning staff as per seniority list. This rule does not indicate that when employees drawing various scales of pay are eligible for promotion to any post, then the seniority of the selected employees has to be fixed separately for the employees in each scale of pay and those who are in the higher scale of pay should be put above those in the next scale. But

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any how it is stated for both that ^{that} practice is being adopted in fixing the inter se seniority when employees in more than one scale of pay are eligible for promotion in regard to a particular post.

Then the question arises as to whether the scale on the last date of filing of application or on the date of interview of the candidate or the date of finalisation of seniority list is relevant. The learned counsel for the applicant submitted that the notification calling for the application for the post of Law Assistant is silent in regard to the same. ~~Neither of the rules~~ ^{The} learned counsel for the applicant has ^{not} _{any value} drawn to our attention has a bearing for consideration of this point. It is submitted for the applicant that the rules ^{also} are silent in regard to the same.

When rules are silent in regard to any particular point, it is not for the court or the Tribunal to formulate the relevant rule. If the selection Committee adopts any particular procedure in regard to the matter for which the rules are silent, then the only ^{point} ~~thing~~ that can be considered by the court or the Tribunal is ~~to see~~ as to whether the said procedure is arbitrary. When the impugned order dated 16-2-93 discloses that the last date for the receipt of applications has to be taken as the ^{relevant} ~~date of~~ criteria, then it cannot be stated that it is arbitrary. ^{in such a case} Further there is no possibility of manipulating in favour of one or the other. If the date of interview or the date of finalisation of seniority is fixed as the ^{relevant} ~~date of~~ criteria, then the scope for manoeuvring does ^{not} arise. In any case, it cannot be stated that fixing of the date of application as the ^{relevant} ~~date of~~ criteria is arbitrary and hence the contention of the applicant that the scale of pay of the employee as on the date of interview has to be taken into consideration for fixing the inter se seniority

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cannot be acceded to. Accordingly this application does not merit consideration. Hence the OA is dismissed at the admission stage itself with no costs.

V.N.Rao
(V. Neeladri Rao)
Vice-Chairman

R.Balasubramanian
(R. Balasubramanian)
Member (Admn.)

(Dictated in the open court)

Dated 2nd March, 1993.

8/2/93
Deputy Registrar (J)

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To

1. The General Manager,
Union of India, S.C.Rly,
Railnilayam, Secunderabad.
2. The Chief Personnel Officer,
S.C.Railway, Railnilayam,
Secunderabad.
3. One copy to Mr.R.Briz Mohan Singh, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One spare copy.

pvm

W.M.2/2/93

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HYDERABAD BENCH

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD

THE HON'BLE MR. V. Neeladri Rao, C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY: M(J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 2-3-1992

ORDER/JUDGMENT:

R.A./ C.A./ M.A. No.

in

O.A. No. 158/93

T.A. No.

(W.P. No.)

Admitted and Interim Directions issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No order as to costs.

pvm.

