

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1616/93.

Dt. of Decision : 19-12-96.

C.S.Pratabhan

.. Applicant.

vs

1. The Statistical and Analysis Officer,
Old F.A. & C.A.O. Building, SC Rly,
Secunderabad.
2. The Financial Adviser and Chief
Accounts Officer (W.S.T.) SC Rly,
Secunderabad.

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Counsel for the Applicant : Mr. S. Madhava Reddy

Counsel for the respondents : Mr. V. Bhimanna, SC for Rlys.

CORAM:

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

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





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ORDER

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

None for the applicant. Heard Mr.V.Bhimanna, learned counsel for the respondents. This OA is disposed of as per Rule 15 (1) of CAT (Procedure) Rules, 1987 on the basis of the materials available on record.

2. The applicant while working as Office Superintendent Gr-II in the Statistical department of SC Railway was promoted as Office Superintendent Gr-I in the scale of pay of Rs.2000-3200/- and was transferred and posted at Hubli vide order No.O.C.No.

applicant made representation on 04-10-93 (Page-5 to the OA) for retaining him at Secunderabad itself in the grade of OS.Gr-I informed that there are request transfer for coming to Secunderabad from Hubli and hence his request cannot be acceded to as per the provisions contained in para 2 (IV) (a) of letter No.1/P/P9/676 dated 3-2-91. He was given a further opportunity to accept the promotion order and carried out his transfer or submit his refusal for promotion by 21-10-93. It is also stated that in case he does not accept the offer of promotion and proceed before 21-10-93 it would be deemed as refusal for promotion and on that basis he will not be considered for promotion for one more year from the date of refusal. As the applicant had not carried out his transfer and also did not give any response from his refusal for promotion and hence he was debarred from promotion for one year. In the mean time, the post at Hubli was filled by the next senior employee, namely, Mr.Mohammed Ismail and posted to Hubli. But that employee also refused the promotion. Hence, the next senior-most OS Gr-II Hubli was promoted and

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arose at Secunderabad and it was also ~~a~~ rostered earmarked for Scheduled ~~for~~ ^{points} Gaste. As the applicant was debarred for promotion for one year ~~xx~~ his case was not considered for promotion even though he was a SC candidate. Against that roster point a junior employee who is impleaded as R-3 in the OA, ^{and} who is a SC candidate was found fit for promotion and she was promoted as OS Gr-I against the roster point and posted at Secunderabad. The applicant submitted his representation for posting him at Secunderabad in the place of R-3. But that was not accepted and his representation dated 4-10-93 ~~.....~~ No. ST/P/535/Vol.I dated 6-10-93 at page-2 to the OA.

3. This OA is filed challenging the ~~.....~~ No. ST/P/40/93 at page-1 to the OA and also order No. ST/P/535/Vol.I dated 6-10-93 ~~.....~~ and for a consequential direction to R-1 to promote him as OS Gr-I in the existing vacancy ~~.....~~ attendant ~~.....~~ retirement of one Mr. Muthyalee, with all consequential/benefits.

4. The main contention of the applicant in this OA is that he was in sick list while the promotion order promoting him as OS Gr-I and posted to Hubli was issued. His wife ~~is~~ ^{was} employed ~~.....~~ young children ~~.....~~ and hence he ~~cannot~~ ^{could} carry out the transfer to Hubli. Considering his family circumstances he requested for retention at Secunderabad against the roster point in which R-3 was promoted.

5. The second contention is that he is an SC candidate and ~~.....~~ posted to a far or place at Hubli is against the Railway Boards' instructions vide Board's letter No. 85-E (SCT)

6. We ~~.....~~ considered the two main contentions which were advanced by the applicant in this OA. There is no need to ~~.....~~ analyse the first contention. The requirement of the department is more of paramount ^{importance} and not the difficulties that will be ~~.....~~ by an ~~.....~~

request of the employee and his difficulties should not be considered. ~~He~~ ^{regarding his case} has to ~~it~~ and a decision has to be taken in regard to posting or transfer. In this case, the respondent authorities ^{have} considered his representation and rejected the same on the basis of the circumstances prevailing then. He was also given an opportunity to express his willingness or otherwise before debarring him for promotion. Hence, the applicant cannot get any relief by this contention. The second contention has been answered by the Full Bench of this Tribunal in OA.848/95 decided on 20-11-96. In that OA also the applicant therein resisted the transfer ^{Contending that it is permissible} Railway Board's letter quoted therein. In that context the Full Bench observed as follows:-

even assuming that the circular prohibits transfer, the relevant questions are whether the circular is enforceable legal right on the applicant. Answers obviously are in the negative. In G.J.Fernandez V. State of Mysore : AIR 1967 SC cannot be enforced in a court and that no writ lies for disobedience of these administrative instructions. For this short reason, the circular is not enforceable. applicant has no remedy before us. It is also settled law that in matters of transfer, an employee whether he belongs to the general category or to the SC/ST or to the Union of India and Others V. S.L.Abbas : 1994 SCC (L&S) 230, Supreme Court held:-

"The ~~Guidelines~~ ^{Government} employee a legally enforceable right".

In these areas, to afford a protection to a member of a particular community ^{as envisaged by Article 16 of the Constitution}, will be against the guarantee of equality in matters of employment under the State. We hold that a member of a Scheduled Caste/Tribe enjoys no special privilege in the matter of transfer and, that the circular/letter mentioned herein before is not enforceable in

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law and that the decision of the Jodhpur Bench in B.S.Varma V. Union of India and others; 1994 (26) ATC 213 as also decision of the Ernakulam Bench of the Tribunal in K.Ramachandran V. Director General, All India Radio, New Delhi and others; (1994) 27 ATC 650 do not lay down the correct law. In view of our answer to the questions referred, we dismiss the application. Parties will suffer their costs".

7. In view of the above observations of the Full Bench, we with are left/no alternative except to reject this contention also.

8. In the result, the OA is dismissed as having no merits.

No costs.

MEMBER (JUDL.)
(91165)

MEMBER (ADMN.)

Dated : The 19th December 1996.
(Dictated in the Open Court)

Amrit
Dy. Registrar (S)

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THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH HYDERABAD

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN, M.A., LL.B.
AND

THE HON'BLE SHRI B.S. DATT PARAMASHRUVAR

DATED: 19/12/96

ORDER/JUDGEMENT

~~R.D./C.P./M.A./N.S.~~

O.A. NO. 1616/93

~~REHELD AND INDICTION DIRECTIONS ISSUED~~
~~ALL ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS.~~

II COURT

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