IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO. 461/93.   DATE OF JUDGMENT: 3-5-95.

BETWEEN:

G.Venkateswara Rao   .. Applicant.

1. Union of India rep. by the
   Secretary, Railway Board,
   Ministry of Railway, New Delhi.

2. General Manager,
   SC Rly, Rail Nilayam,
   Secunderabad-500 371.

3. Financial Adviser&Chief Accounts Officer,
   SC Rly, Secunderabad.

4. Financial Adviser&Chief Accounts Officer/WST,
   SC Rly, Becunderabad..   .. Respondents.

COUNSEL FOR THE APPLICANT: SHRI N.Rama Mohana Rao

COUNSEL FOR THE RESPONDENTS: SHRI N.R.Devaraj,
                              Sr./ADGP.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

OA 461/93

J U D G E M E N T

(as per Shri Justice V.Neeladri Rao, Vice-Chairman)

This O.A. was filed praying for declaration that the action of the respondents in refusing to consider the candidature of the applicant for the purpose of promotion to the post of Programmer Group-B is un-constitutional, arbitrary and unsustainable and for a consequential direction to the respondents to consider the case of the applicant also for promotion to the post of Programmer based on and taking into account his length of service as Assistant Programmer in the Electronic Data Processing Centre (EDPC), South Central Railway, Secunderabad and if found successful in the written test followed up by viva voce to direct the respondents to promote him also as programmer.

2.   EDP units have been introduced in a phased manner in South Central Railway during 1970s. It is alleged for the applicant that as at that time not many specialists being available in the country especially in the serviceof the Railways, most of the personnel were drafted through selection process from other departments.

3.   EDP Centre has three streams: (i) Data Entry Operators cadre; (ii) Console Operators cadre; and (iii) Assistant Programmers cadre. The first two stream operators cadre mainly deal with feeding of computers and rarely deal with software, while the/Assistant Programmers being the starting cadre for preparation of programming,

of computers, deal with soft-ware programming of compu-
ters.

4.   While the posts of Data Entry Operator and Console
Operators are cadre posts, the posts of Assistant Progra-
mme were ex-cadre posts till they were caderised on
15-3-93. The volunteers from various departments in
the railways on qualifying in the Aptitude test in
_ _____ _____ ___ ___ ex-cadre posts
of Assistant Programmers.

5.   The applicant joined service as Junior Clerk in
the Railways in 1963. He changed the cadre to that of
Typist and by 1982 he was promoted as Senior Stenographer.
While he was working in the said category he opted to
be considered for determining his aptitude to move out
to EDP Centre. The applicant was one of the five
candidates declared to have passed on the basis of his
performance in the written test that was conducted on
25-5-85 and after interview on 26-5-85 he was selected
to the post of Assistant Programmer and appointed to
the said post as per order dated 16-12-85. He joined
the said post in EDP Centre on 18-12-85.

6.   The posts of Programmer were also ex-cadre posts
till they were caderised as per the Indian Railways
Electronic Data Processing Department (Gazetted Posts)
Recruitment Rules, 1989 (for short 1989 Rules).
The 1989 rules specify that the posts of Programmer
have to be filled by promotion failing which by transfer
on deputation and failing which by direct recruitment.

The promotion is by way of selection from amongst Group-C
staff working in the EDP Department holding the grade
the minimum of which is Rs.1400/-, and higher Group-C
grade on a regular basis provided they have rendered
a minimum of three years ~~con~~ of ~~serviceson~~ regular
service in the grade and they have reached the stage
of Rs. 2050/-

7.   The Ministry of Railways through letter dated
9-8-91 upgraded ~~the~~ two Group C posts of Senior Subordinates
in S.C.Railway as Programmers/Assistant EDP Managers
in Group-B status. When it was decided by the S.C.Rly
to treat both the upgraded posts as Programmers
a list of 8 who were within the zone of consideration
was finalised. Even though it included the names of
Shri D.Venugopal and Shri P.Sudhakar, the Assistant
Programmers, the name of the applicant was not included.
Then the applicant made a representation that as he is
the senior most Assistant Programmer his name also
should be included in the list for consideration for
promotion to the post of Programmer. His request was
negatived by stating that as he is not in the regular
cadre of EDP Department he is not eligible for con-
sideration for promotion to the post of Programmer as
per 1989 Rules.   Feeling aggrieved, the applicant
preferred this O.A.

8.   The applicant was working as Senior Stenographer
in the office of the Chief Mechanical Engineer.   He was
selected for the ex-cadre post of Assistant Programmer
which is in EDP Centre having his lien in the seniority
unit under the Chief Mechanical Engineer.   Admittedly
he does not belong to the substantive cadre of EDP
Centre.   The 1989 Rules specifically state that the
promotion to the post of Programmer is from amongst the
Group-C in the Electronic Data Processing Department
in the payscale having having the minimum of Rs.1400/- and
higher grade.   It is hence contended for the respondents
that as the applicant is not in the regular cadre of
EDP Department and as he is only in the ex-cadre of
the EDP and as his substantive cadre is in the Mechanical
Engineer's office he was rightly informed that he will
be eligible for promotion in his parent cadre and not
in the EDP Department.

9.   But the learned counsel for the applicant urged
as under:

    Even till 1989 the posts of Programmer were ex-
cadre.   Till 1989 the Assistant Programmers were being
promoted as Programmers. While the Assistant Programmers
and Programmers deal with software, the data entry
operators and console operators in the EDP Department
mainly deal with feeding of computers.   The qualification
in the Aptitude Test in Grade A or B is essential and it is
the main requirement for discharging the duties as Asst.
Programmer/Programmer.   When both the posts of Assistant

Programmer, and Programmer deal with software it is just
and reasonable to consider the cases of the Assistant
Programmers also for promotion to the post of Programmer.
When both the posts of Assistant Programmer and Programmer
were ex-cadre posts, the Assistant Programmers were being
considered for promotion to the post of Programmer. So it
It may not be just to exclude the Assistant Programmers
from consideration of promotion to the post of Programmer
when only the posts of Programmers were encadred while
the posts of Assistant Programmers were not encadred.
The posts of Assistant Programmers should have also
been encadred while the posts of Programmers were caderised,
and realising it the posts of Assistant Programmers
were caderised on 15-2-93.   It will be violative of
Article 16 of the Constitution which makes a provision
for equal opportunity when more qualified candidates
for the post are excluded while less qualified are
made eligible for the purpose of promotion to the post
of Programmer.

10.   It may be noted that the post of Assistant Programmer
in zonal or PU E^{D}P Centre are treated as cadre posts
with effect from 15-2-93. But the note referred to in
the Railway Board's letter No.E(NG) I/87/PM16/3 dated
15-2-93 lays down that the cadre posts of Assistant
Programmer have to be filled entirely by promotion,
lateral induction of staff in Console Operators' stream
in the same grade or with minimum two years service
in the immediate lower grade. Only when suitable staff
in Console Operators' stream are not available, the
posts may be filled from suitable staff in the same
grade or with minimum two years service in the immediate
lower grade from other areas. Graduation and A or B grade
in aptitude test will be insisted upon as at present.

Even as per that note the incumbent of the ex-cadre posts of Assistant Programmers are not given option for being absorbed in the posts of Assistant Programmers. They have to be filled from amongst the Data Entry Operators or Console Operators having qualification of aptitude test Grade A or Grade B. Inthe absence of the above category the employees in the other departments who passed Grade A or Grade B aptitude tests have to be selected.

11. It is urged that even in the provision as per note dated 15-2-93 for filling the cadre posts of Asst. Programmer is arbitrary for no option is given for those who are dealing with the software for being absorbed while the promotions are intended to be made from amongst those who are dealing with the hardware when the posts of Assistant Programmers deal with software only.

12. Normally the posts in a particular department will be filled either by way of promotion or by promotion and direct recruitment. There will also be a provision for transfer or transfer on deputation. If in such a case there is a provision whereby the posts have to be filled by promotion and not by transfer and/or transfer on deputation, the same cannot be held as arbitrary for the experience in the lower post will be helpful in discharging the duties in the higher post. But in this case the posts of Data Entry Operators, Console Operators and Assistant Programmers are below the posts of Programmers, and the posts of Assistant Programmers are filled from volunteers including those who are working as Data Entry Operators/Console Operators if they had qualified in the aptitude test Grade A or Grade B.

While the posts of Data Entry Operators and Console Operators
are cadreposts, the posts of Programmer were ex-cadre till
1989 and the posts of Assistant Programmer were ex-cadre
till 1993. Further when the data entry operators and
Console Operators mainly deal with feeding of computers,
the Assistant Programmers and Programmers deal with software.
Hence the Data Entry Operators and Console Operators are not
eligible for promotion to the post of Programmer unless
they qualified in Aptitude Test Grade A or Grade B.
Wheb is required for discharge of duties either as
Assistant Programmer or Programmer is the qualification
in the Aptitude Test Grade A or Grade B. Thus it is not
a case where the post of Programmer is a regular promo-
tion post for Data Entry Operators and Console Operators.
Further if the post of Assistant Programmer was caderised
even before or at the time of encadering the post of
Programmer, it can be stated without hesitation that a
recruitment rule which makes only the Data Entry Operators
and Console Operators mainly dealing with feeding of
comouters, eligible without making the Assistant Programmer
eligible for promotion to the post of Programmer when
both Assistant Programmer and Programmer deal with
software and when the post of Assistant Programmer is
not lower to the post of Data Entry Operator and Console
Operator, is violative of Article 16.

13.   Then the next question which arises is as to whether
it will be a case of denying an opportunity to the more
qualified when Assistant Programmers though in ex-cadre
post are not made eligible for promotion to the post of
Programmer while the Data Entry Operators and Console
Operators are made eligible for such promotion. The
knowledge in the software is essential for discharging
the duties as Programmer. The knowledge in the same

is decidedon the basis of aptitude test Grade A/B.   The
Assistant Programmers were qualified in the same even
before they were appointed as Assistant Programmers.   Only
such of the Data Entry Operators and Console Operators
who are qualified in the Aptitude Test Grade A or B are
eligible for promotion as Programmer.   Thus of course they
are also having the knowledge in software.   But while
Assistant Programmers are having experience in dealing
with software the Data Entry Operators and Console
Operators are not having such experience while discharging
duties as Data Entry Operator/Console Operator.   There
will not be any difference in experience in between one
who works in the cadre post and the one who works in
the ex-cadre post.   Both acquire the same experience
in discharging the duties of same category of posts.
Can it then be stated that the contention for the
applicant that the 1989 Rule which makes only the Console
Operators and the Data Entry Operators who are mainly deal-
ing in feeding computers eligible for promotion to the post
of Programmer who has to deal with software, when the
Assistant Programmers dealing with software and thus
having experience in the same are excluded, is violative
of Article 16 of the Constitution in denying equal opportunity,
is untenable?   We feel that the post of Assistant Programmer
also should have been encadred while the post of Programmer
was caderised in 1989, or atleast the Assistant Programmers
though in ex-cadre posts, should also have been made
eligible for promotion to the post of Programmer.
After the posts of Assistant Programmer were encadred
in 1993 they too are eligible for promotion to the post
of Programmer for they are in Group-C of EDP Department.
Hence we feel that the 1989 Rules in regard to Programmer

to the extent it had not made the Assistant Programmers in ex-cadre posts, who are working in the said posts by the time the vacanciesin the post of Programmer had arisen, eligible for promotion is violative of Article 16 of the Constitution for it is a case of excluding the experienced in dealing with software while making those who are not having experience in dealing with software eligible for promotion to the post of Programmer dealing with software. Hence the Assistant Programmers in ex-cadre posts though they did not belong to substantive cadre of EDP Department shall also to be considered for promotion to the post Programmer. Thus by reading down the relevant recruitment ruleby including Assistant Programmers, though ex-cadre, it can be held as valid.

14. Shri D.Venugopal and Shri P.Sudhakar, the Assistant Programmers in the ex-cadre posts were included in the list of eligible candidates for consideration for promotion to the post of Programmer on the ground that they were in the substantive cadre of Data Processing Superintendent/Senior Console Operator. Thus their inclusion was on the ground that they belong to EDP Department in their substantive cadre but not on the ground that they were Assistant Programmers. As the applicant is not in the substantive cadre of the EDP Department his name was not included in the said list. As already observed the name of the applicant was not included in the said list by the concerned authorities on the ground that he is eligible for promotion in his parent unit only, but not for the posts in the EDP Department viz. the borrowing unit herein as per generalrule. But in view of the special features of the posts of Data Entry Operators cadre, Console Operators cadre, Assistant Programmers cadre, we held

Copy to:-

1. Secretary, Railway Board, Union of India, Ministry of
   Railway, New Delhi.

2. General Manager, S.C.Railway, Railnilayam, Secunderabad.

3. Financial Adviser & Chief Accounts Officer, S.C.Rly,
   Secunderabad.

4. Financial Adviser & Chief Accounts Officer/ WST, S.C.Rly,
   Secunderabad.

5. One copy to Sri. N.Rama Mohana Rao, advocate, CAT, Hyd.

6. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
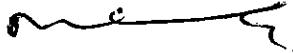
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8. One spare copy.

Rsm/-

that if the cases of Assistant Programmers though they are in ex-cadre posts, are not considered for promotion to the post of Programmer, it is violative of Article 16 of the Constitution. In the above view there is no need to consider for disposal of this O.A. as to whether choice has to be given to the Assistant Programmers in the ex-cadre posts to get themselves absorbed in thecadre posts of Assistant Programmers which are created for the first time on 15-2-93. We are leaving it open for consideration as and when it arises.
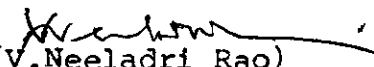
15. As per interim order dated 7-5-93 in this O.A. the applicant was permitted to appear for written test and also the viva voce for consideration for promotion to the/posts of Programmers, the vacancies for which had arisen due to the upgradation of two posts as per Ministry's communication dated 9-8-91. But his result was not published as per directions in the interim order.

16. In the result this O.A. is disposed as under:

"The applicant has to be promoted as Programmer (Group-B) if he has passed and his grading is w ithin the two and if he is promoted he has to be given promotion from the date on which the other ~~Assistant Programmer~~ or Programmer was appointed on promotion with consequential seniority and monetary benefits."
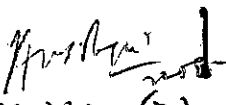
17. The O.A. is ordered accordingly. No costs.

(R.Rangarajan)
Member/Admn.

(V.Neeladri Rao)
Vice-Chairman

Dated: The   th day of May, 1995.

mhb/

OA·461/93

IN .THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT. HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

A N D

THE HON'BLE MR.R.RANGARAJAN:(M(ADMN)

DATED ----3/5---- 1995.

ORDER/JUDGMENT:

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

OA.NO.   in 461/93

TA.NO.   (W.P.   )

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No.order as to costs.

No spare copy