

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION-NO:1201-OF-1994

DATE-OF-ORDER:-15.9.97-

BETWEEN:

K.V.JANARDHANAN

.. APPLICANT

AND

1. Union of India represented by
The General Manager,
South Central Railway,
Secunderabad,

S.C.Railway, Secunderabad,

3. O.R.Venkata Ramana Rao,
4. CSR Acharyulu,
5. I.Chenchu Ramaiah,
6. M.Sankar Rao

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.G.RAMACHANDRA RAO

COUNSEL FOR THE RESPONDENTS: Mr.K.SIVA REDDY, Addl.CGSC

CORAM:

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

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

JUDGEMENT

Heard Mr.G.Ramachandra Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the official respondents. Private respondents have received notice but they were not present. There was also no counsel for them. Mr.Murthy, Deputy Chief Personnel Officer, South Central Railway was present to explain the promotion of reserved candidates.

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2. The short facts of this case which encompass the whole issue is in regard to the reversion of the applicant on 30.11.83 from the post of Chief Clerk to Head Clerk. If the reversion is decided ^{to be in order} ~~whether~~ in accordance with the rules ~~as~~ ~~then~~ then the whole issue gets resolved.

3. The facts of this case leading to the promotion of the applicant to the post of Chief Clerk and above are as follows:-

The applicant while working as Head Clerk in the Controller of Stores Organisation was promoted as adhoc Chief Clerk (OS Gr.II) on 28.4.83. He was reverted back as Head Clerk on 11.6.83 as he was working only as an adhoc Chief Clerk. He was again promoted as Chief Clerk on 20.7.83. A panel for the post of Chief Clerk was issued by the Memorandum No.LGD/Est/2326/Pt.VI dated 17.11.83 (Annexure R-V to the 14.11.83. In this panel, the applicant was shown at Serial No.5 whereas R-5 was shown at Serial No.12. The applicant was reverted by the Office Order No.136/E/1983 dated 17.11.83 (Annexure R-V-A to the reply) from the post of Chief Clerk to Head Clerk and transferred to G&S Depot/MFT vice ~~Sgt M Vasant~~ ~~whereafter the applicant was promoted as Chief Clerk on 25.4.84 and continued as such without reversion.~~ He was promoted to the post of OS Gr.I on 23.12.86. It is stated that he was also reverted from the post of OS Gr.I and he lost consideration for promotion to the post of Assistant in the seniority in the category of Chief Clerk because of his

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reversion involved vide order dated 17.11.83.

4. This OA is filed praying for a direction to the Respondents 1 to 3 to regularise the services of the applicant as Chief Clerk with effect from 14.11.83 as the panel for Chief Clerk was issued, with all consequential and attendant benefits including promotion and seniority on due dates to the posts of Office Superintendent and Assistant Controller of Stores and also arrears of salary.

5. The main contention of the applicant in this OA is that his reversion by the order dated 17.11.83 is irregular as as R-5 is junior to him in the panel. Further, on the date of his reversion, there were posts of Chief Clerk available and hence he should have been retained against those available posts without reverting him in which case his seniority would have been protected and it would have helped him to continue given him ^{the} necessary seniority position for consideration to the post of Assistant Controller of Stores in the Group-B service.

6. A reply has been filed in this OA. The main contention of the respondents is that the reversion of the applicant by the order dated 17.11.83 ~~Could~~ ^{Consequently} not have been avoided as there was ~~conjunction~~ in the cadre and the junior persons have ^{to} be reverted. Though the SC candidate ^{was} is junior, he could not be reverted in view of the Railway Board's D.O. letter No.82-E(SCT)15/6 dated 22.5.1982. Further they contend that there were no posts in the post of Chief Clerk to continue him on 17.11.1983 thereby ^{avoiding} ~~awarding~~ his

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reversion. Hence his seniority has been fully protected on his promotion as Chief Clerk with effect from 25.4.1984 which was preponed to 1.1.1984 later and he was considered for promotion to OS Gr.I and for higher post on the basis of that seniority.

7. When the applicant was reverted on 17.11.83, R-5 though junior in the panel of Chief Clerk must necessarily be retained in that post as "In case of selection the candidates are appointed as per their panel position except in case of Scheduled Caste/Scheduled Tribe candidates who are appointed as per the roster point". The Chief Clerk being a selection post, the above instructions of the Railway Board will hold good. Hence it has to be held that the respondents have followed the Railway Board's instructions in the D.O. letter dated 22.5.82 correctly while reverting the applicant on 17.11.83 instead of reverting R-5. The Railway Board's letter dated 22.5.82 is reproduced below for clarity:-

"Kindly refer to Board's letter No.E(SCT)65CM/15/6 dated 21st October 1965 appearing on page 157 of the Brochure, IInd Edition, 1976. It is clear from the second para of this letter that if an employee belonging to Scheduled Caste or Scheduled Tribe is lower down in panel and is consequently junior in the cadre, is to be retained in preference to his senior provided he has been appointed against an earlier point in the roster. In case of selection the candidates are appointed as per their panel position except in case of Scheduled Caste/Scheduled Tribe candidates who are appointed as per the roster point. However, in case of non-selection posts

although all the candidates including Scheduled Castes/Scheduled Tribes are appointed as per seniority, the Scheduled Caste/Scheduled Tribes candidates are adjusted against the roster point. So, irrespective of the date of appointment, the appointments of the reserved candidates are adjusted against the roster point, against which they have been included in the select list. In view of the above, in case of non-selection posts also in case of reversion due to shrinkage of cadre the candidates the roster, i.e., a Scheduled Caste/Scheduled Tribe candidate lower down in the select list should be retained in preference to his senior provided he has been appointed against an earlier point of the roster register.

issued earlier to the contrary by the Board, may be treated as cancelled."

8. From the above analysis, it is clear that the applicant cannot contend that he should ^{have been} retained and R-5 ^{have been} ~~be~~ retained when the reversion order dated 17.11.83 was issued. Hence this contention fails.

9. The second contention is that there was a post in the ~~-----~~ was issued. For this the applicant relied on his knowledge regarding availability of the post. He has stated so in Para (m) of the OA. If there is a post vacant, the applicant should have stated the exact place where the post was vacant and also the strength of the cadre thereby bringing out the fact that there was a post vacant. But such details are not

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available. Hence when the respondents submit that there were no posts on the date when he was reverted i.e, on 17.11.83 then it cannot be held as ^{an} incorrect submission. Further even if there is a post vacant, the respondents have full right not to operate the post as work load may not necessitate for operation of that post. The learned counsel for the applicant submits that in case the respondents do not want to operate that post then an Office Order to that effect has to be issued surrendering that post thereby indicating that there ^{where} ~~are~~ no sanctioned posts available on that date. In the normal circumstances, the submission of the applicant may be in order. But we should take the extenuating circumstances in which the post was kept vacant and not operated. There is always restriction on the respondents not to create new post. If the post is shown as surrendered then creation of that post at a later date when the work load ~~is~~ ^{becomes} increased is, very difficult. ~~But~~ ^{Probably} the respondents have not surrendered that post. Hence the fact that the post is not surrendered may not give any right to the applicant to be promoted against that post if there is no work. Hence this contention also fails.

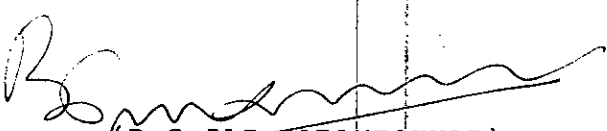
10. The applicant also relies on the availability of the Para (o) and (p) of the OA. The question in this OA is whether there was a post available after his reversion on 14.11.83 or not. If there were posts vacant earlier to that date, it will not help the applicant to get any right to be the points raised in paras (o) and (p) of the OA may not be relevant to this issue.

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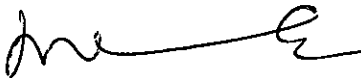
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11. In view of the above analysis, it transpires that the applicant was reverted due to the exigencies of service and R5 was continued in view of the Railway Board's letter dated 22.5.82. The Railway Board's letter dated 22.5.82 is not challenged. Hence it has to be held that the reversion of the applicant was done in accordance with law. He was further promoted to OS Gr.I and also would have been considered for the post of Assistant Controller of Stores in Group-B on the basis of that seniority. In view of the above, we find that there is no merit in this OA to give any relief to the applicant.

12. In the result, the OA is dismissed as having no merits. No order as to costs.

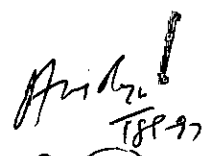

(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

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(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: -15th-September, -1997
Dictated in the open court.

vsn


TSP 97
D-R (J)

28/9/97 (6)

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: M
(3)

DATED: 15/8/97

ORDER/JUDGEMENT

M.A./R.A/C.A.NO.

in

O.A.NO. 1201/94

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

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II Court.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal भेद्यन/DESPATCH 24 SEP 1997 हस्ताक्षर/साक्षी HYDERABAD BENCH
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