

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::

AT HYDERABAD

(Application filed under Section 19 of the Administrative
Tribunals Act, 1985)

O.A.NO.1473 OF 1994

Between:

M.Kesavelu, S/o late Murugesan,
aged 56 years, working as
Assistant Law Officer, South
Central Railway, Rail Nilayam,
Secunderabad.

...APPLICANT.

A N D


1. Union of India represented by its
Secretary, Railway Board, Rail Bhavan.
2. General Manager, South
Central Railway,
Rail Nilayam, Secunderabad.
3. Chief Personnel Officer,
Nilayam, Secunderabad.
4. Sri K.J.Reddy, Law Officer,
Office of the General Manager.
South Central Railway,
Secunderabad.

...RESPONDENTS.

DETAILS OF THE APPLICATION.

1. Details of the Order against which the Application is
made.

1. ORDER NO: .. Office Order No.471/94
(P/GA7/675/TC/QA1)
2. DATE: .. 23.11.1994.
3. PASSED BY: .. 3rd Respondent.
4. SUBJECT IN BRIEF : .. Promoting the 4th respondent as Law
Officer on adhoc basis without con-
sidering the case of the Applicant
for promotion to the post of Law
Officer.


(M-KESAVELU)
SIGNATURE OF THE APPLICANT

...2

2. JURISDICTION:

Applicant states that Under Section 14 of the Administrative Tribunals Act, 1985 (Central Act 13 of 1985) this Hon'ble Tribunal has jurisdiction to decide the issues arising in this case and they relate to the conditions of service of the Applicant. In this case the applicant is questioning the action of the respondents 2 and 3 herein in denying promotion to the post of Law Officer and promoting the 4th respondent herein on adhoc basis under the impugned orders.

3. LIMITATION:

Applicant states that the present Application is filed within the period of Limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 (Central Act 13 of 1985). The impugned order is dated 23.11.1994 and the present application is filed within the time prescribed under the Act.

4. FACTS OF THE CASE:

a) Applicant is now working as Assistant Law Officer in the post of General Manager, South Central Railway, Rail Nilayam, Secunderabad. Applicant has been working as Assistant Law Officer since ~~October~~ ^{August}, 1985.

b) Applicant states that he was directly recruited as Typist in the Railways by the Railway Service Commission, Madras and posted as Typist in the Office of the Divisional Commercial Superintendent at Hubli in the year 1959. He was promoted as Senior Typist in the year 1964. While working as Senior Typist, Applicant had acquired qualifications of ~~Bachelor~~ ^{Bachelor} of Arts and ~~Bachelor~~ ^{Bachelor} of Law from Karnataka University.


(M. KESAVELU)
SIGNATURE OF THE APPLICANT

at Dharwar. Applicant was selected for the post of Law Assistant in the year 1973 and posted as Law Assistant in the Office of the Chief Commercial Officer, South Central Railway, Secunderabad. Subsequently, the Applicant was promoted as Chief Law Assistant in the year 1979 and posted in the office of the General Manager(Law Section) Secunderabad. While working as Chief Law Assistant, Applicant was selected and empanelled for promotion to the post of Assistant Law Officer in the year 1982. Though the applicant had initially worked for one month in the post of Assistant Law Officer, he was promoted on regular basis as Assistant Law Officer on 29.08.1985 and ever since he has been working as such.

c) Applicant states that he is qualified and eligible for promotion to the next higher post of Law Officer in the scale of pay of Rs.3000-4500(RSRP). Method of recruitment to the post of Law Officer and Assistant Law Officer is under "The Railways Senior Law Officer, Law Officer, Assistant Law Officer and Estate Officer(Group-A and Group-B posts) Recruitment Rules, 1992. These rules were made under Article 309 of the Constitution of India in supersession of the Railways Law Officer/Assistant Law Officer and Estate Officer Recruitment Rules, 1978 and the aforesaid Recruitment Rules from the year 1992 were notified by the 1st respondent under Notification No.84/E(GR)/I/14/1, dated 20.07.1992. The method of recruitment, qualifications to the posts of Senior Law Officer, Law Officer, Assistant Law Officer and Estate Officer are given in the schedule to the said notification. The post of Law Officer in the scale of pay of Rs.3000-4500(RSRP) is classified as General Central Service Group-A Gazetted Non-Ministerial and it is a selection post. As per the method of recruitment provided under the aforesaid rules was first by

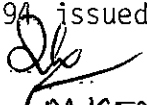
the post has to be filled
Qk
 (M.KESARELU)
 SIGNATURE OF THE APPLICANT.

(U)

way of promotion failing which by transfer on deputation(including short term contract)/transfer. It is further provided that the promotion to the post of Law Officer is from the category of Assistant Law Officer and Estate Officer with eight (8) years regular service in that grade. (A COPY OF THE AFORESAID RECRUITMENT RULES IS FILED HEREWITH AS ANNEXURE - 1).

d) Applicant states that as per the aforesaid rules he possesses the requisite educational qualifications and became eligible for promotion ^{on} by completing 8 years of service as Assistant Law Officer by 29.08.1993. In as much as the post of Law Officer in the grade of Rs.3000-4500(RSRP) in the South Central Railway was not filled on regular basis in accordance with the aforesaid Recruitment Rules, Applicant made representation on 06.08.1993 addressed to the 2nd respondent herein requesting him to consider the case of Applicant for promotion to the post of Law Officer even on adhoc basis, subject to regular selection. This was followed by reminders dated 21.01.1994, 23.08.1994 and 06.10.1994. But the said representations did not elicit any response from the 2nd respondent herein. (COPIES OF THE SAID REPRESENTATIONS ARE FILED HEREWITH AS ANNEXURES - 2, 3, 4 and 5).

e) Applicant states that while matters stood thus, the 4th respondent herein while working as Assistant Commercial Manager in the office of the Divisional Railway Manager, South Central Railway, Secunderabad was posted as Assistant Commercial Manager(Law) in the General Administration Department, South Central Railway, Secunderabad as per the Office Order No.425/94 issued under proceedings No.P/GAZ/675/TC/94 dated 20.10.1994 issued by the



(M. KESAVELU)

SIGNATURE OF THE APPLICANT

12

3rd respondent and who assumed charge of the said post on 17.11.1994 was promoted and posted to officiate in the Senior Scale as Law Officer in the Office of the General Manager, South Central Railway, Secunderabad as per the Office Order No.471/94 issued under proceedings No.P/GAZ/675/TC/944 dated 23.11.1994. Applicant states that the 4th respondent herein was promoted on adhoc basis to officiate in the senior scale of Law Officer without considering the case of the applicant for promotion to the post of Law Officer. Applicant states that he is the only candidate qualified and eligible for promotion to the post of Law Officer(senior scale) from the category of Assistant Law Officer and the 4th respondent is not at all qualified for promotion even on adhoc basis to the post of Law Officer(senior scale). Infact there is no cadre or post as Assistant Commercial Manager(Law) and the Assistant Commercial Managers are not qualified and eligible for promotion to the post of Law Officer as per the Recruitment Rules excepting on transfer when there are no qualified and eligible candidates for promotion. (COPIES OF THE ORDERS DATED 17.11.1994 AND 23.11.1994 REFERRED TO ABOVE ARE FILED

f) Applicant states that the post of Law Officer in the senior scale fell vacant on 01.07.1989 consequent on retirement of one Sri D.Francis Paul, Law Officer on 30.06.1989 on attaining the age of superannuation. The respondents 2 and 3 herein without filling the said post in accordance with the Recruitment Rules which were in force at that time down-graded the said post of Law Officer from Group-A senior scale to Group-B and one Sri P.P.Vittal working as Assistant Commercial Officer(Rates) in the Traffic, Transportation and Commercial Department, South Central Railway was transferred to the General Administration and


(M. KESAVELU)

SIGNATURE OF THE APPLICANT.

(13)

posted as Law Officer on adhoc basis. The said action of the respondents 2 and 3 herein in transferring and posting Sri P.P.Vittal referred to above was questioned by one Sri B.Devadass, Chief Law Assistant in the office of the Chief Claims Officer, South Central Railway, Secunderabad in O.A.No.115 of 1990 before this Hon'ble Tribunal. Several contentions raised in the said O.A.No.115 of 1990 by Sri B.Deva Dass. One of the contentions raised by him was that if the applicant herein who was working as Assistant Law Officer ^{was} and promoted as Law Officer(Group-B) instead of posting Sri P.P.Vittal he would have been promoted as Assistant Law Officer in the consequential vacancy. On behalf of the respondents 1 to 3 herein a Counter was filed in the said case. In para 8 of the said counter, it is stated as follows:

"It is submitted that Sri M.Kesavelu, Assistant Law Officer could not be considered for promotion to senior scale even on adhoc basis as he did not have the requisite number of years of service as Group - B Officer in order to tide over the situation, efforts were made to transfer one of the officers of the Commercial Department working in the senior scale with Law qualification for filling up the post as a temporary measure. However, this did not yield any results. Two of the three officers considered for the same expressed their unwillingness for posting as Law Officer while one of them although willing was not suitable for posting as Law Officer as there is no previous experience in dealing with law matters of the Railway. In view of the same, the post of Law Officer was filled up by the seniormost Assistant Commercial Officer in Group-B


(M. KESAVELU)

...SIGNATURE OF THE APPLICANT:

14

having a degree in Law and also good experience in dealing with legal matters was drafted to man the said post as a stopgap arrangement until alternative arrangements are made by the Board on regular basis.

While disposing of the O.A.NO.115 of 1990 on 16.04.1990, this Hon'ble Tribunal observed as follows:

"We however find that this stopgap or temporary arrangement has been continuing for more than 9 months ever since 5.7.1989. Obviously, this situation or position cannot be allowed to be continued indefinitely. It is necessary that the respondent must make a regular appointment to the post of Law Officer in accordance with the rules within a reasonable time. Further, if it is proposed to downgrade the post permanently even then the appointment must be made regularly in accordance with the rules prescribed for Assistant Law Officers. We would accordingly direct the respondents to terminate the stopgap or temporary arrangement within a reasonable time not exceeding 3 months and to make regular arrangements for filling up of the vacancy of Law Officer. With these observations the application is dismissed with no orders as to no costs."

Though the directions were given to the respondents 1 to 3 herein to terminate the stopgap or temporary arrangement within a reasonable time not exceeding 3 months and to make regular arrangements for filling up the post of Law Officer, the respondents 2 and 3 have not taken any steps for filling up the post of Law Officer(senior scale) till this day.

g) Applicant states that in view of the fact that the respondents 2 and 3 herein have not filled the post of Law

dk
(M. KESARELO)

SIGNATURE OF THE APPLICANT

Officer(senior scale) on regular basis in accordance with the recruitment rules, applicant had given several representations referred to above. In as much as he is qualified and eligible for promotion to the post of Law Officer(senior scale). In this regard the South Central Railway Promotee Officers Association; All India Scheduled Caste and Scheduled Tribes Railway Employees Association and the Indian Railways Legal Employees Association submitted their representations dated 25.02.1994, 29.09.1994 and 25.10.1994 respectively to the 2nd respondent herein. (COPIES OF THE SAID REPRESENTATIONS ARE FILED HERewith AS ANNEXURES - 8, 9 and 10).

Applicant states that inspite of the above representations, the respondents 2 and 3 herein even ignoring the directions of this Hon'ble Tribunal made in O.A.No.115 of 1990 have promoted the 4th respondent herein as Law Officer on adhoc basis under the impugned orders dated 23.11.1994.

h) Subsequent to the order of this Hon'ble Tribunal in OA No.115 of 1990, the first respondent had also addressed a letter dated 23.05.1990 to the Deputy Chief Personnel Officer of the South Central Railway, Secunderabad wherein it is clearly stated that as per recruitment rules Group-B posts of Assistant Law Officers are to be filled by promotion of eligible Group 'C' employees of the Law Department. There is no reason why the Recruitment Rules could not be followed even for adhoc basis if eligible officers of the entitled categories are available and also called upon the concerned authorities for taking necessary action for implementation of the judgment.(A COPY OF THE SAID LETTER DATED 23.05.1990 is FILED HERewith ANNEXURE - 11).

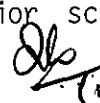

(M. KESAVELU)
SIGNATURE OF THE APPLICANT

5. GROUND OF APPEAL WITH LEGAL PROVISIONS:

a) Applicant states that the action of the respondents 2 and 3 herein in filling the post of Law Officer(senior scale) without considering the case of the applicant for promotion to the said post even on adhoc basis is illegal, unjust, arbitrary and also discriminatory and violative of the Articles 14 and 16 of the Constitution of India.

b) Applicant states that as per the Recruitment Rules, 1992 the post of Law Officer(senior scale) has to be first filled by promotion from the category of Assistant Law Officer who has put in 8 years of service as such and when there are no eligible candidates for promotion then only the respondents 2 and 3 herein could resort to fill up the post of Law Officer either ~~on~~ by deputation or by transfer and there is no valid reason or justification for the respondents 2 and 3 herein to not follow the Recruitment Rules, 1992. the Law Officer(senior scale) even on adhoc basis.

c) Applicant states that the action of the respondents 2 and 3 herein in not filling the post of Law Officer(senior scale) on regular basis in accordance with the Recruitment Rules is contrary and in defiance of the directions of this Hon'ble Tribunal in O.A.No.115 of 1990 referred to above. Applicant states that the 4th respondent herein who was working as Assistant Commercial Manager in the office of the Divisional Railway Manager, Hyderabad Division, South Central Railway, Secunderabad had assumed the post of Assistant Commercial Manager/Law in the General Administration department, South Central Railway, Secunderabad only on 17.11.1994 and again under the impugned orders dated 23.11.1994 he was promoted to senior scale on adhoc basis and promoted to officiate as Law Officer (senior scale) duly


SIGNATURE OF THE APPLICANT

17

upgrading the Assistant Commercial Manager/Law post to the senior scale is not qualified to be promoted as Law Officer(senior scale) even on adhoc basis according to the Recruitment Rules.

d) Applicant further states that as per the Recruitment Rules, 1992 even on transfer on deputation including ^{short} ~~their~~ term on contract basis only the following categories of officers ^{only qualified} ~~are classified~~ and eligible for the same

1. Holding analogous posts on regular basis; or
2. With 5 years' regular service in posts in the scale of Rs.2200-4000 or equivalent; or
3. With 7/8 years' regular service in posts in the ~~equivalent~~ ^{equivalent} respectively; and
4. Possessing the educational qualifications and experience prescribed for direct recruits under

Applicant states that the 4th respondent does not possess the requisite qualifications under the Recruitment Rules which are statutory in force and the impugned order dated 23.11.1994 promoting the 4th respondent as Law Officer(senior ^{even on adhoc basis} ~~scale~~) is therefore ~~illegal~~

e) Applicant further states that when once the statutory rules are made then the appointments must be made in accordance with the rules and no power can be conferred under the rules to relax the rules of recruitment by executive instructions and the backdoor and adhoc appointment

M. Kesavelu
(M. KESAVELO)

SIGNATURE OF THE APPLICANT.

(12)

according to rules are mutually antagonistic and strange bed partners and they cannot co-exist in the same sheath and any appointment made even on adhoc basis contrary to rules ^{and} even ~~in the~~ negation of fair play and justice as laid down by the Supreme Court in the case of J&K Public Service Commission Vs. Dr. Narendra Mohan and others reported in 1994(1) Services Law Reporter at page 246.

f) Applicant further states that the action of the respondents 2~~a~~ and 3 herein in filling up the post of Law Officer(senior scale) on adhoc basis by appointing the 4th respondent is also not bonafide; in as much as there is no such post of Assistant Commercial Manager(Law) in the Law Department was posted in the Law Department and promoted to the said post in quick successions in a period of one week the headquarters and inspite of his representations made by him and on behalf of the applicant referred to above.

g) Applicant further states that in order to comply with the directions of this Hon'ble Tribunal dated 16.04.1990 in O.A.No.115 of 1990 and the letter of the 1st respondent dated 23.05.1990 referred to above, the 4th respondent was designated as Assistant Commercial Manager(Law) though there is no such post in the classification of various posts in the South Central Railway and the respondents 2 and 3 herein have resorted to the same only to accommodate the 4th respondent for ext^{ra}aneous reasons.

h) Applicant states that the action of the respondents 2 and 3 herein on adhoc basis is unjust and contrary to fair play.


(M. KESAVELO)
SIGNATURE OF THE APPLICANT.

i) Applicant states that he ^{has} ~~is~~ only 2 years of service before attaining the age of superannuation and there is no valid reason or justification for the respondents in not considering the case of the applicant for promotion to the post of Law Officer (senior scale) even while it is ^{filled} ~~filling~~ up on adhoc basis.

6. DETAILS OF REMEDIES EXHAUSTED:

In the above circumstances, applicant has no other remedy except to approach this Hon'ble Tribunal with this Original Application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

Applicant states that he has not filed any other case before this Hon'ble Tribunal or any other Bench of the Central Administrative Tribunals claiming the same or substantially the same relief which is subject matter of this Application.

8. RELIEF SOUGHT:

For the facts mentioned in para 4 and the grounds raised in para 5, Applicant herein prays that this Hon'ble Tribunal may ^{be pleased to} call for the records relating to the appointment of Law Officer(senior scale) and quash the proceedings No.P/GAZ/675/TC/94(Office Order No.471 of 1994) dated 23.11.1994 in so far as the said proceedings relating to the 4th respondent herein as Law Officer(Senior Scale) with a consequential direction to the respondents 1 to 3 herein to promote the Applicant as Law Officer in the scale of pay of Rs.3000-4500(RSRP) with effect from 20.10.1994(when the post ^{all} fell vacant) with attendant benefits including monetary benefits:


(M. KESAVELU)

SIGNATURE OF THE APPLICANT.

20

9. INTERIM RELIEF SOUGHT FOR:

Applicant states that he is only the qualified and eligible person in the category of Assistant Law Officer for promotion to the post of Law Officer(senior scale) in accordance with the Recruitment Rules, 1992 and in spite of the representations made by him to the 2nd respondent and in spite of the representations made on his behalf by the Association, the respondents 2 and 3 have resorted to the filling up of the post of Law Officer(senior scale) by promoting the 4th respondent when the Applicant was away from headquarters on official duty.

It is, therefore, necessary in the interests of justice to direct the respondents to forthwith consider the case of the applicant for promotion to the post of Law Officer(senior scale) by suspending the impugned Office Order No.471 of 1994 issued under-proceedings No:P/GAZ/675/TC/94 dated 23.11.1994; as otherwise the applicant will be put to great hardship and irreparable loss.

10. In the event of application being sent by registered post, it may be stated whether the Applicant desires to have oral hearing of the admission stage and if so, he shall attach a self addressed post-card or Inland Letter, at which intimation regarding the date of hearing could be sent to him.

..NOT APPLICABLE..

11. PARTICULARS OF BANK DRAFT/POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE:

2. Name of the Issuing Post Office:
3. Date of issue of Postal Order:
4. Post office at which payable:

APD. HED
20-11-94
Rs 50/- A
(M. KESAVELU) I.P.O. B.C.D.D./Remover

SIGNATURE OF THE APPLICANT.

(21)

12. LIST OF ENCLOSURES:

1. Vakalat.
2. Indian Postal Order for Rs.
3. Material papers:

VERIFICATION:

I, M. Kesavelu, S/o late Murugesan, aged 56 years, working as Assistant Law Officer in the office of the General Manager, South Central Railway, Rail Nilayam, Secunderabad, do hereby verify that the contents of the above paragraphs are true to my knowledge and that I have not suppressed any material facts.

(Signature)

(M. KESAVELU)

SIGNATURE OF THE APPLICANT

Date: 29-11-1994.

To
The Registrar
Central Administrative Tribunal
Hyderabad Bench
HYDERABAD

(Signature)

COUNSEL FOR THE APPLICANT.