

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
HYDERABAD

(5)

O. A. NO. 425 of 1994

Between:

G.V.Krishnamurthy
S/o G.Suryanarayana
Aged about 50 years
Office Superintendent Gr.I
CSTE's (Construction)Office,
South Central Railway
Rail Nilayam
Secunderabad - 500 371

- - - Applicant

A N. D

1. Chief Personnel Officer
South Central Railway
Rail Nilayam
Secunderabad - 500 371

2. General Manager
South Central Railway
Rail Nilayam
Secunderabad - 500 371

3. Member (Staff)
Railway Board
Rail Bhavan
New Delhi - 110 001

- - - Respondents

APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT 1985

I PARTICULARS OF THE APPLICANT:

The particulars of the applicant's are as mentioned in the above cause title.

The address of the applicant is that of his counsel M/s. G.V.Subba Rao and N.Ethirajulu, Advocates, H.No. 1-1-230/33, Chikkadapally, Hyderabad - 500 020.

II PARTICULARS OF THE RESPONDENTS:

The particulars of the respondents are as mentioned in the above cause title.

III Order against which this application is made:

- 1) CPO/SC, Secunderabad letter No. P(R)605/VI dated 29-1-1993 communicating Railway Boards instructions regarding eligibility condition for selection to the post of Asst. Personnel Officer.
- 2) CPO/SC letter No. P/GA 2/607/PB/93-94 dated 22-2-1994 declaring the applicant as ineligible to appear for the selection of Asst. Personnel Officer on 9-4-1994.
- 3) CPO/SC letter No. P/GA 2/607/P.B/93-94 dated 30-11-1993 calling for applications to fill up the posts of Assistant Personnel Officer in South Central Railway.
- 4) CPO/SC letter No. P/GA 2/607/PB/93-94, dated 6-4-1994 rejecting the applicant's representation dated 7-3-1994.

IV JURISDICTION:

The applicant declares that the subject matter of the O.A. is within the jurisdiction since the applicant is employees as O.A. in Superintendent Gr.I in the office of Chief Signal & Tele Communication Engineer, South Central Railway, Secunderabad, under section 14 (i), (e) of Central Administrative Tribunal Act 1985.

V LIMITATIONS:

The applicant further declares that the O.A. is well within the limitation in as much as his representation dated 7-3-1994 has been ~~not~~ rejected by the respondent No. 1 ~~as~~ of the Central Administrative Tribunal Act 1985.
u/s. 21(i)(a) of CAT Act 1985

VI FACTS OF THE CASE:

The applicant humbly submits that he was appointed as Clerk in S&T department on 10-2-1964 and promoted as Office Superintendent Gr.I in the scale of Rs. 2000 - 3200/- on 25-8-1993 in continuation as this is a non-selection post.

2. In response to notification issued by CPO/SC vide his letter dated 30-11-1993 inviting applications to fill up 70% quota of Assistant Personnel Officers in the scale of Rs. 2000 - 3500/-, the applicant applied for the same. In the said notification, the eligibility criteria which was fixed in that Group 'G' employees who have put in a minimum of 3 years non fortutious service in the grade Rs. 1600 - 2660/- ~~for the examination~~ and above as on 1-7-1993 are eligible for the selection.

3. It is respectfully submitted that a selection was conducted earlier to the posts of Assistant Personnel Officer in South Central Railway wherein such condition was not laid down. It may be mentioned that the appointment also appeared for the said selection in the year 1991 pannel published on 31-3-1992. In this pannel Sl.No.1 and Sl.No. 10 & 13 who did not put in minimum 3 years of service in the grade Rs.1600 - 2660/- were empanelled and promoted as APOs.

4. The CPO/SC vide his letter dated 22-2-1994 advised the applicant that he is not eligible to appear for the examination since he had not completed 3 years service in grade Rs. 1600 - 2660/- as on 1-7-1993, for getting the fact that the applicant is already in higher grade of Office Superintendent Gr.I in grade Rs. 2000 - 3200/- with effect ~~from~~ 25-8-1993. The minimum service of 3 years in Office Superintendent Gr.II has no relevance to the applicant in view of the fact that he is already in a higher grade. Even in terms of the notification dated 30-11-1993, there is no stipulation that above grade Rs.1600 - 2660/- grade employees should put in 3 years minimum service in the lower grade. When an employee has already been promoted to a higher grade on

regular basis, there should be no restriction for his eligibility to appear for the APOs selection as he is already in a higher and Superintendent grade as ~~exxx~~ compared to the staff working in lower grade. There is no reasonable logical nexts in imposing such an unreasonable restriction disqualifying them for selection. If the intention of the condition in that only employees in grade Rs. 1600.-2660/- are only eligible then there is no need to mention that the employees in grade Rs. 1600 - 2660/- and a basic are eligible. A plain reading would disclose that higher grade employees are eligible to appear irrespective of their length of their service in the lower grade.

5. The applicant has put in 30 years service and had been working as Office Superintendent on regular basis and denying him the right to be considered for promotion as APO is violative of article 14 & 16 of the Constitution.

6. It is further submitted that the clarification issued by the Railway Board as communicated by the CPO/SC on 29-1-1993 applies only to employees in grade 1600 - 2660/- for being considered against 70% quota it does not mention anything about the employees who are in higher grade. The action of the CPO/SC in interpreting the said restriction in the case of the applicant and denying his right to be considered for the post of APO is arbitrary, illegal and unconstitutional violative of the fundamental rights of the applicant.

7. It is pertinent to point out that the applicant possesses the necessary eligibility condition to appear for the examination reviewed from the angle of service in higher grade as well as academic qualifications like M.A., M.Com. LLM and also P.G.Diploma holder in Industrial ~~and~~ Relations and Personal Management which none of the other candidates possess.

8. Further, it will not be out of place to mention that the applicant found eligible to appear for ~~the~~ a similar selection of APOs held in 1991. The applicant is not appearing for the first time to be brought under the purview of the restriction. As this is the second attempt it is a continuous of the process and he had already acquired a vested right since he is an already approved candidate for the selection of APOs and applying the restriction ~~in~~ his case is ~~xxx~~ arbitrary.

9. The interpretation by the CPO/SC of the Railway Board's letter is misconceive. There is no prohibition spelt out in the said letter that employees in higher grade are not eligible to appear for selection unless they put in 3 years service in the higher grade. When one is promoted to higher grade, for purposes of further promotion the length of service in the lower grade has no relevance.

10. It is respectfully submitted that after the inter seniority of the candidates qualified for ~~xxx~~ ~~xxx~~ ~~xxx~~ vivavoce has to be drawn according to the grade and unit in which they are working. The seniority of Office Superintendent Gr.I and Office Superintendent Gr.II has been decentralised and confined to the respective units. The post of Office Superintendent Gr.II in a selection post whereas OS Gr.I is non selection post and promotion is on the basis of seniority cum suitability. As a result of decentralisation of the seniority of OS Gr.I and Gr.II there are several units on the South Central Railway which different seniorities.

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of the DSTE (MW/Maintainance) as headclerk at the time of decentralisation, became senior in that unit and on account of selections being conducted earlier to OS Gr.II became senior to the applicant in the OS Gr.II has since become eligible to appear for the selection.

12 In the case of the applicant the permanent vacancy of OS Gr.II actually arose on 19-2-1986 whereas the selection was conducted in 1991 as a result of which he had lost five years seniority in ~~ex~~ OS Gr.II.

13 It is submitted that at the time of scrutiny of the applications if this procedure is followed the question of rejecting the applicant does not arise.

14 It is pertinent to point out that the CPO/SC finalised the LDCE examination panel in 1994 March after issue of the letter dated 29-1-1993. In the said selection the minimum service for eligibility to appear for the LDCE

in respect of employees of various units was fixed up as 3 years in the lowest grade of Rs. 425 - 700/- i.e. Rs. 1400 - 2300/-. No stipulation regarding the minimum service in respect of higher grades was prescribed. Such being the case the eligibility condition fixed for OS Gr.I in the scale Rs. 2000 - 3200/- should put in minimum ~~sex~~ service of 3 years in the grade of ^{OS}Gr.II is arbitrary. When an employee is in higher Supervisory grade the insistence of minimum service in the lower grade ~~mak~~ for 3 years is contrary to the principle of equality in that a higher grade employee is denied a right to be considered for promotion as APO on the ground that he has not put in 3 years service in the lower grade. It is a matter of common sense that an employee is promoted to higher grade only on the basis of seniority and suitability. The administration can not adopt two different standards in the matter of selection for APO conducted through the 70% departmental examinations and 30% LDCE. In respect of 70% departmental examinations only senior most persons in grade Rs. 2000 - 3200/- are called according to the field of eligibility. But in the case of APOS by 70% departmental promotion which is thrown open to all departments, the prescribed qualification to appear for selection is 3 years nonfortutious service in scale 1600 - 2660/-. But when higher grade people are also eligible to appear for the examination laying of the condition that they should put in 3 years service in the 1600 - 2660/- lower grade is not logically tenable. The employees in higher grade automatically have to be declared eligible to appear for the selection irrespective of their service in the lower grade. The imposition of unconscionable condition in respect of higher grade employees will result in their being eliminated from the field of eligibility to appear for the examination.

not withstanding the fact that they are in higher grade, and staff in the lower grade are preferred only on the ground that they have put in 3 years service.

15 It is respectfully submitted that the applicant made the representation to CPO/SC on 7-3-1994 requesting for permission to appear for the selection of APOs and the same was rejected on 6-4-1994.

16 The applicant is left with no other alternative except to seek redressal of this grievance through this Hon'ble Tribunal.

VII RELIEF

In view of the facts mentioned in para VI of the above the applicant prays that this Hon'ble Tribunal may be pleased to call for the records pertaining to the selection of Assistant Personnel Officer in the South Central Railway and ~~reject~~ quash the letter dated 22-2-1994 by declaring ~~that~~ ^{reject} excluding the applicant's name from the list of eligible candidates to appear for the selection of APOs scheduled to be held on 9-4-1994 as arbitrary, illegal and unconstitutional; violative of article 14 and 16 of the Constitution, and consequently permit him to appear for the selection to be held on 9-4-1994.

VIII INTERIM RELIEF:

Pending disposal of the O.A. the applicant prays that this Hon'ble Tribunal may be pleased to direct the respondents to permit him to appear for the selection scheduled to be held on 9-4-1994 as otherwise irreparable damage would be caused to the applicant in that his right to ~~be~~ be considered for the promotion as APO would be infringed and he will be denied the opportunity of being considered and pass any other

order or orders as deemed fit properly and just in the circumstances of the case.

IX REMEDIES EXHAUSTED:

The applicant declares that he has exhausted all the remedies available to him under the service rules in as much as his representation dated 7-3-1994 was rejected on 6-4-1994

X MATTERS PENDING IN ANY OTHER COURT ETC:

The applicant declares that the matter regarding which the application made is not pending with any court of law or any other authority or bench of the Tribunal.

XI DETAILS OF POSTAL ORDERS: (P.O.B.C./O.D. Removed)

Postal orders No. G 33 585906, 907, 908 and 904 and 905 of 7-4-1994 for Rs. 50/- (Rupees fifty only) in favour of Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

XII DETAILS OF INDEX:

An index in duplicate containing the details of the case meant to be relied upon is enclosed.

XIII LIST OF DOCUMENTS:

a) Postal Orders No. 333 585904 to 908 for Rs. 50/-

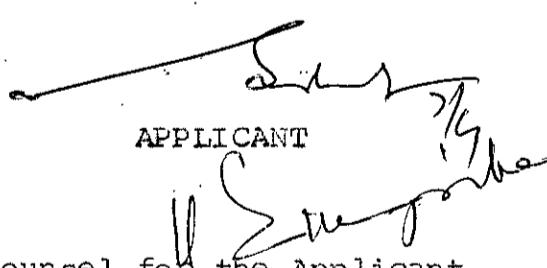
b) An index containing the details of material papers .

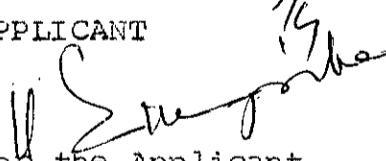
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VERIFICATION

I, G.V.Krishna Murthy, S/o G.Suryanarayana aged 50 years working as Office Superintendent Gr.I in the office of Chief Signal & Tele Communication Engineer (Construction), South Central Railway, Rail Nilayam, Secunderabad and resident of 6-1-119/9/1, Padmarao Nagar, Secunderabad - 25 do hereby solemnly affirm and verify that the contents of paras 1 to 13 of the application are true and correct to ~~max~~ the best of my knowledge and belief and that I have not suppressed any material facts of the case.

Hence verified on this the 7th April, 1994.


APPLICANT


Counsel for the Applicant

To
The Registrar
Central Administrative Tribunal
Hyderabad Bench, Hyderabad.