

(7)

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

O.A. No. 1349 of 1995

Date of Decision: 28-1-97.

Between :-

E. Venkataramana.

..... Applicant.

And

1. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.

2. The Chief Personnel Officer,
S.C. Railway, Secunderabad.

3. The Dy. Chief Mechanical Engineer,
Carriage Repair Shop, Tirupathi.

4. The Workshop Personnel Officer,
Carriage Repair Shop, Tirupathi.

5. K. Gopinath, Chargeman-B,
Tirupathi. Respondents.

Counsel for the Applicant :: Mr. P. Sridhar Reddy

Counsel for the Respondents :: Mr. M.R. Devaraj.

CORAM :-

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI :: VICE CHAIRMAN.

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

JUDGMENT

(oral order per Hon'ble Sri. R. Rangarajan, Member (Admn)).

None of the applicant. Sri. Satyanarayana for
N.R. Devaraj for the respondents.

The applicant while working as Chargeman-B was
kept under suspension. Subsequently he was removed
from service on 30-3-1993. Later this Tribunal set aside

the removal order imposed on the applicant on the ground of procedural lapses in removing him from service as per direction in O.A. No. 1547/94. He was reinstated in pursuance of the above directions on 19-7-1994 and was kept under deemed suspension from 13-3-1993 till 18-10-1994. Thereafter he was transferred to Hubli Workshop on administrative grounds on 20-10-1994. That transfer order was also challenged on the file of this bench in O.A. No. 1316/94. He was put back to duty in Tirupathi shop on 11-9-1994.

The Disciplinary authority namely respondent-3 herein allowed his case to be considered for promotion to the grade of Chargeman-A. The post of Chargeman is a non-selection post and the suitability has to be adjudged on the basis of the records ie., confidential reports and service registers. The suitability test as above was held on 30-6-93. The applicant was found unsuitable. Subsequently also after reinstatement the applicant was called for suitability test for promoting him as Chargeman against the ST roster point on 7-12-1994. In that test also he was found unfit for promotion. The rule stipulates that an employee who fails in the selection whether it is on the basis of positive act of selection or on the basis of suitability test can be called for further test only after lapse of 6 months. In the meantime one Sri. Gopinath Respondent No. 5, who was also considered against the S.T. roster point was subjected to suitability test and was found fit for promotion to the post of Chargeman-A by the competent authority. Respondent No. 5 was promoted on 22-8-1995. As R-5 was already promoted against the roster point the ~~xxime~~ applicant was not called for subsequent suitability test after a gap of 6 months.

The applicant was informed by letter No. TR/P.535/Sup/V-3 dt. 26-10-1995 (Annexure- 19, page 39 of the OA) that his case will be considered for suitability test for chargeman-A after completion of 6 months from the last suitability test i.e., 25-7-1995 or as and when vacancy arises whichever is later.

This O.A . is filed praying for a declaration that the action of the respondents in not promoting the applicant as Chargeman-A with effect from 29-11-1991 against the roster of the reserved quota for ST which was deferred due to pendency of D.A.R proceedings against the applicant even after dropping the charges against him after due inquiry and further action of the respondents empanelling the R-5 as Chargeman-A against roster point No. 4 as R-5 happens to be junior to him and rejecting his application for promotion by the impugned order dt. 26-10-1995 as arbitrary, illegal and for a consequential direction for promoting him to the post of Chargeman-A against the vacancy reserved for STs.

A reply has been filed in this connection. The applicant has also filed rejoinder. The right of the applicant for promotion arises only if he passes the suitability test- As per the ratio laid down in Janakiraman's case the respondent submit the case was considered even when he was under suspension but he was not found fit though the applicant denies such procedure has been adopted. Repeatedly his case ~~his case~~ was considered for promotion, but he was not found fit even in December 1994. The respondent No. 5 in the meanwhile has become eligible for consideration against the ST

roster point as Res- 5 is also an S.T. candidate and his case was considered and was promoted. The applicant cannot question the promotion of R-5 on any of the grounds as his right due to his seniority arises only if he is found fit for promotion. After he is not found fit for promotion he cannot question the promotion of Respondent- 5 on any ground even if the respondent-5 is junior to him. It is stated in the impugned order dt. 26-10-1995 that his case will be considered after completion of 6 months from 25-7-1995 or as and when vacancy arises whichever is later. In view of the above reply there is no ambiguity that the applicant will not be considered in future. He has to take his chance in accordance with the rules when next vacancy arises in future as per his normal seniority or as per his seniority in the S.T. Quota. The rejoinder filed by the applicant only insists that he should be promoted irrespective of the fact whether he is found fit or not in the suitability test. Such contention cannot be a reason for granting him relief as asked for in this O.A. The administration cannot permit a candidate who is not meritorious enough to hold a higher charge. To ensure that the promoted candidates are fit to hold higher charge the suitability/ selection are held. No one has right to be promoted irrespective of the fact whether he proves his suitability or not. The promotion of respondent No. 5 having been promoted due to his fitness cannot be questioned by the applicant. He himself admits that it is a fact that he is not found fit in this selection.

Inview of what is stated above we are convinced that the applicant has not made out any case for granting him the relief as asked for in this O.A. Hence the O.A. is liable only to be rejected.

In the result the O.A. is dismissed as having no merits. No costs.

Certified true copy
Court officer,
Central Administrative Tribunal,
Hyderabad.

:: O R D E R ::

The case was heard yesterday at length and the judgment was dictated in the open court dismissing the application. However, Sri. P. Sridhar Reddy, learned counsel for the applicant today mentioned at the mentioning time that he may kindly be heard today as he was unable to attend the court yesterday due to reasons beyond his control. We showed indulgence to his request and heard him today.

2. The main point brought out by Sri. P. Sridhar Reddy is that the applicant was considered for promotion during the period 1993 when he was away from service. Hence such a consideration is not valid in the eye of baw, when the applicant was not an employee of the Railways. He further said that thereafter his case was not considered. We find from page 3 of the reply that the applicant's eligibility for promotion was considered on 7-12-1994 and he was found unsuitable by the competent authority for promotion on that day also. Hence it cannot be said that the respondents have not considered his case after he was reinstated. Further it has to be

observed that whenever an employee who has been put back to service setting aside the removal order and when he was away from service his case for promotion came up he should be considered for promotion after he had been put back to service in accordance with the rules. If he comes up to the requirement at that time in the just instance itself probably he may have claim for promotion from a date before his removal if his juniors were promoted during that period. But in this case the applicant failed to pass the suitability test even on 7-12-1994 when he was in service. Hence he cannot claim any relief for promotion from an earlier date. The applicant questions the conduct of the suitability test as he feels that his C.Rs are satisfactory and on that basis his promotion cannot be prevented. But that is a point to be decided by the Selection Committee and we cannot sit on judgment on the view taken by the selection committee. Inview of ~~xxxxxxxx~~ what is stated above we hold that our earlier decision needs no modification. Hence the O.A. stands dismissed. No costs.

sd/- xxxxxxxxxxxxxxx

Certified true copy

Court officer,

Central Admn. Tribunal, Hyd.

// True copy //



Review Application

DISTRICT :: CHITTOOR.

① Service to be made
② 2 more copies of
letter to be filed.

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

Represented

Complied

P.W.

Review Application No.

/97

O.A.No. 1349 / OF 1995.



REVIEW APPLICATION

Received
26/3/97
R.N.P. Deed

Mr. P.B. VIJAYA KUMAR.
Counsel for the Applicant.

26/3/97
R.N.P. Deed