

33

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

C.A.1049/95.

Dt. of Decision: 11-06-98.

A.Lakshma Reddy

.. Applicant.

VS

1. The Union of India, rep. by the  
General Manager, SC Rly,  
Rail Nilayam, Sec'bad.

2. The Chief Personnel Officer,  
SC Rly, Rail Nilavam, Sec'bad.

3. Sri P.Yallaiah.

.. Respondents.

Counsel for the applicant : Mr.P.Krishna Reddy

Counsel for the respondents : Mr.V.Rajeswara Rao, Addl.CGSC.

CORAM:-

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

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

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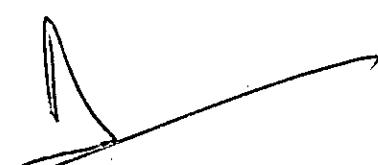
ORDER

ORAL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

Heard Mr.Smt.Sarada for Mr.P.Krishna Reddy, learned  
counsel for the applicant and Mr.V.Rajeswara Rao, learned counsel  
for the respondents. Notice served on R-3. R-3 called absent.  
Mr.Y.Laxminarayan, APC, of the Railway was present and deposed  
before us.

2. The applicant in this CA joined as Trained Graduate  
Teacher in Mathematics on 13-6-88 in Railway Boys High School at  
Purna. He was subsequently transferred in 1991 to Railway Boys  
High School, Lalaguda, Sec'bad. Subsequent to his joining the

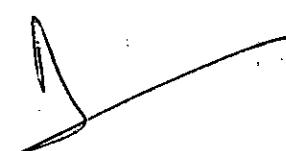
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railway he acquired Post Graduation Degree in M.Sc., Mathematics. While the applicant was working at Lalaguda a notification No.P.594/SEL/II/Vol.V dated 24-6-94 (Annexure-IV) was issued for filling up two vacancies of Junior Lecturers/PGTs in Mathematics in the scale of pay of Rs.1640-2900/-. Out of two posts one <sup>was</sup> ~~is~~ reserved for ST and the other post was Unreserved. The applicant was called for that test against ST quota. However the results of the selection held in pursuance of the notification dt. 24-6-94 was not published due to some internal administrative problems.

3. A second notification bearing No.P.594/SEL/II/Vol.V dt. 12-6-95 (Annexure-II) was issued after one year of the earlier notification published in 1994 for filling up the post of Junior Lecturer/PGTs in Mathematics in the scale of pay of Rs.1640-2900/-. In this notification, out of two posts, one post is Unreserved and another post is reserved for SC. The applicant was not called for the test as he belongs to ST community and there is no reservation for ST community. It may also be possible that the applicant may be junior to call for selection due to his low seniority against the Unreserved quota.

4. It is stated that out of the two posts earmarked in the 1995 notification, the unreserved post was filled and the SC post was not filled. The applicant was selected and posted as Junior Lecturer/PGT in Mathematics or 9-12-97 by memorandum No.YP/594/SCH/JLS Selections.97 dt. 9-12-97. The applicant contends that the selection in the year 1994 was not finalised. When a fresh selection for those vacancies was notified in 1995 there should be no reason to reserve one post for SC instead of ST as ST vacancy notified in 1994 selection was not filled. Further ST backlog vacancy had occurred much earlier to the backlog vacancy of SC and hence in 1995 also the vacancy should have been reserved for ST and the applicant



should have been called for selection for that vacancy. If he ~~is~~ <sup>was</sup> found eligible he should have been promoted. As that was not done and the selection for the 1995 vacancy is reserved for SC, the whole selection procedure is vitiated as it infringed the reservation rules

5. The OA is filed praying for a direction to the respondent to revise the bifurcation of vacancy in 1995 to ST and OC and not for OC and SC and subsequently promote the applicant as Junior Lecturer/PGT in Mathematics as he had already been promoted i.e., preponing of his date of promotion to 1995.

6. The applicant had impleaded R-3 as a party respondent as he was called for the selection in 1995 as can be seen from the notification dated 12-6-95. But it is stated that Mr.P. Yellaiah was not promoted against the selection held in 1995 and hence the impleading of R-3 may not be necessary, if the applicant is going to be shown as promoted in 1995 itself below the unreserved candidate in that selection.

7. A reply has been filed in this OA. The main points to be noted in the reply are as follows:-

(i) The applicant was subjected to selection in 1994 but he was not found fit for promotion. Hence, he cannot have any right for promotion for that year.

(ii) The applicant had failed in the selection in 1994 and he was the only candidate available to fill up the ST quota. As he failed in 1994 selection the vacancy was renotified, one for unreserved and one for SC and hence the selection ordered for 1995 is in order.

(iii) As there was backlog vacancy of SC also, the SC vacancy was notified in 1995.

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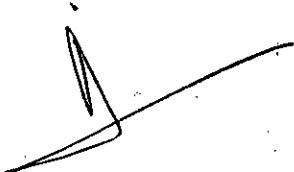
8. The presumption made by the respondents that as the applicant had failed in 1994 selection, he may not pass the selection in 1995 is an illogical presumption which cannot hold water at all. Such a presumption is not called for. Further the results for the 1994 selection were not finalised at all. When the results ~~are~~ <sup>were</sup> not finalised there can be no question of saying that the applicant was not selected. Unless the panel is published, the question of deciding the merit of the applicant does not arise. Hence this contention has to be jected out right.

9. Further the presumption that since the applicant had failed in 1994 selection he will not come up in the year 1995 ~~xxix~~ <sup>unimaginative</sup> selection is not only ~~absurd~~ but may also be a vindictive presumption, though we may not attribute any malafides in this connection. We feel that the said presumption is not only illogical but also destroys the constitutional safeguards granted to the ST candidates. Hence the bifurcation of the vacancy in 1995 when the <sup>was</sup> ST quota ~~is~~ not filled and allotting that vacancy to SC is irregular..

10. Normally, the backlog vacancies are repeatedly included in the subsequent selection if the reserved vacancies cannot be filled earlier subject to the condition that the reservation is limited to the extent of 50%. The earliest backlog vacancy is to be filled first and then only other backlog vacancies arising subsequently in the cadre are to be filled.

11. Mr. Y. Laxminarayan, APO states that the earliest backlog vacancy as per the roster register is for ST. Hence the respondents have correctly bifurcated the two vacancies in the year 1994 one for SC and another for ST. When such situation existed, it is utterly irregular to rearrange the vacancies that had arisen in 1995 allotting

32



one to SC and another to Unreserved. The vacancy in 1995 also should have been allotted to ST as that vacancy being the earliest backlog vacancy. Hence allotting the vacancy to SC in the notification dated 12-6-95 is also irregular.

12. Considering the above we are of the opinion that the applicant should have been examined in the year 1995 itself and if he had been found fit he should have been promoted in that year. In case he had not been promoted then the respondents have the power to get a reserved from the competent authority and fill it up by other senior official. It may also be possible for them to fill up the SC backlog vacancy if rules permit in case no suitable ST candidates are available. That was not done.

13. In view of what is stated above, the applicant should be deemed to have been promoted in 1995 itself ~~and~~ (as he had already been promoted in the first instance itself in 1997) and placed below unreserved candidate who had passed the examination in pursuance of the notification at. 12-6-95 and the consequential benefits are to be given to him accordingly. The above would mean postponing of his promotion from 9-12-1997 to 1995.

14. Mr.Y.Laxminarayan, APC fairly submitted that an error was committed in the year 1995 and when an administrative error is committed, it can be rectified in accordance with the para-228 of IREM Vol.I and necessary action will be taken to rectify the error committed.

15. In view of the above, the following directions are given:-

(i) The applicant should be deemed to have been promoted as Junior Lecturer/FGT in Mathematics in the scale of pay of Rs.1640 2900/- in pursuance of the notification dated 12-6-95 and his name

*TG*

*J*

should be placed below that of the unreserved candidate who was selected and posted as Junior Lecturer/PGT in Mathematics in pursuance of the notification dated 12-6-95.

(ii) The pay of the applicant should be notionally fixed from that day onwards in the scale of pay of Rs.1640-2900/- and he is eligible for arrears on that basis from the date he actually shouldered higher responsibilities.

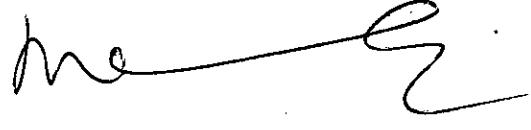
16. With the above direction the OA is disposed of.

No costs.

  
(B.S. JAI PARAMESHWAR)

MEMBER (JUDL.)

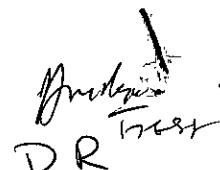
11.6.98

  
(R. RANGARAJAN)

MEMBER (ADMN.)

Dated : The 11th June, 1998.  
(Dictated in the Open Court)

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## Copy to:

1. The General Manager, South Central Railway, Railnilayam, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Railnilayam, Secunderabad.
3. One copy to Mr. P. Krishna Reddy, Advocate, CAT, Hyderabad.
4. One copy to Mr. V. Rajeswara Rao, Advocate, Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.

YLKR

25/6/98  
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II COURT

TYPED BY  
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 11/6/98

ORDER/JUDGMENT

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

in

D.A.NO. 1048/PS

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLR

