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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 484 OF 1995

Dated, the 24th November, '98.

BETWEEN :

- | | |
|------------------------|---------------------|
| 1. R. Krishmaiah | 9. V. Sudakaraiah |
| 2. J. Bathinna Babu | 10. M. Venkataiah |
| 3. V. Eswaraiah | 11. N. Subrahmanyam |
| 4. T. Subrahmanyam | 12. C. Rangaiah |
| 5. B. Penchalaiah | 13. L. V. Subbaiah |
| 6. K. Munisubrahmanyam | 14. O.P. Chenchaiah |
| 7. M. Haribabu | 15. K. Chandran |
| 8. K. Shankarachary | 16. N.V. Ramana |

... Applicants

A N D

1. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. The Deputy Chief Mechanical Engineer,
Carriage Repair Shop,
South Central Railway,
Tirupathi.
3. Workshop Personnel Officer,
Carriage Repair Shop,
South Central Railway,
Tirupathi.

... Respondents

COUNSELLS :

- For the Applicants : Mr. K. Sudhakar Reddy
For the Respondents : Mr. V. Rajeswara Rao

CORAM :

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMIN)

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

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O R D E R

(PER : HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (J))

1. Heard Mr. K. Sudhakar Reddy, Learned Counsel for the applicants and Mr. V. Rajeswara Rao, Learned Standing Counsel for the respondents.
2. There are 16 applicants in this O.A. They are all working in various Group 'D' posts under R-3. They submit that they are eligible to be considered for promotion to Group 'D' as Junior Office Clerks in the scale of pay of Rs.950-1500 RSRP and also claim to have put in the requisite length of service.
3. They submit that the avenue chart for promotion of Group 'D' personnel in the Stores Department has been issued by the CPO, Secunderabad as per his letter No.P/529/Stores/Vol.III dt. 11.8.87. They submit that as per this avenue chart the Group 'C' posts in the Stores Department have to be filled up only from among the Group 'D' posts in the Stores Department.
4. They submit that the Work Shop Personnel Officer, Tirupathi issued a Notification bearing No.TR/P/531/Class-IV/ Tirupathi dt. 7.7.93 and invited applications from all Group 'D' Staff of all the batches except the Accounts Department to consider for promotion to Group 'C' service as Junior Office Clerk against 33 1/3rd quota and it was proposed to conduct selection to form a panel against the anticipated sanction of 100 units out-turn.
5. As per the said Notification Written Test and Viva-voce Tests were conducted and a panel was prepared.
6. The grievance of the applicants herein is that even though they were working in the Stores Department and the vacancies in the Group 'C' cadre were existing they were not

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called for consideration for promotion along with the Group 'D' staff as per the Notification dt. 7.7.93 and the respondent authorities are making efforts to fill up the vacancies belonging to Assistant Controller of Stores Department by bringing personnel from outside the department and other branches in the work shop.

7. They submit that they submitted representations dt. 4.6.94 and 25.1.95. However, the respondents did not take any action to consider their case for promotion to Group 'C' posts. Further, they submit that supporting their case, the Assistant Controller of Stores Carriage Repair Shop, Tirupathi in his letter dt. 25.1.95 addressed to the Workshop Personnel Officer, CRS Tirupathi. Inspite of this the respondents permitted the Group 'D' Personnel of other branches and other departments of the Work Shop to appear for the Written Test and Viva Voce Tests and the respondent authorities allowed the said Group 'D' staff from outside without any justification.

8. Hence, they have filed this O.A. for direction to the respondent authorities to fill up the vacancies of Group 'C' posts against 33 1/3rd per cent under LDCE quota in the Stores Department of the Assistant Controller of Stores, Carriage Repair Shop, Tirupathi only from among the eligible Group 'D' staff as per the avenue chart for promotion dt. 11.8.87.

9. On 7.4.97 an interim order was passed restraining the respondents from filling up the posts of Junior Clerks in the Stores Wing by posting those who were promoted as Junior Clerks in the other units from Group 'D' in the Work Shop.

10. However, the respondents made appearance and filed a reply and relied upon the avenue chart dt. 25.10.91 to contend

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that Group 'D' Personnel working in other branches and other departments are also eligible to appear for Group 'C' posts in the Stores department and that they have done the selection in response to the Notification dt. 7.7.93 as per the avenue chart for promotion dt. 25.10.91.

11. After hearing the Learned Counsels for the parties and after perusing the avenue chart dt. 25.10.91, this Tribunal by its order dt. 20.6.96 in M.A. 361/96 vacated the interim order issued earlier.

12. The respondents have filed a detailed counter contending that the application is barred by time; that the applicants were silent during this period when the panel was prepared in the year 1995; that the persons empanelled for Group 'C' posts in the Stores Department are not made parties to this O.A. that the O.A. is bad for for non-joinder of the necessary parties; that the avenue chart dt. 25.10.91 was prepared and published after consulting the representatives of the Unions and also it was given vide publicity; that the avenue chart dt. 11.8.87 relied upon by the applicants was issued for Group 'C' Cadre Ministerial and Non-Ministerial staff in the Stores Department; that the same is generally applicable to the Staff of Stores Department of the South Central Railway; that as the Carriage Repair Work Shop, Tirupathi was newly established, they had consultations with the recognised Unions and officials of the South Central Railway before taking into consideration of the grievances of the respective employees through the recognised unions, framed the rules/regulations/avenue chart; that to decide the issue of promotion from Group 'D' to Group 'C', the Railway Administration had consulted two recognised Unions viz. SCR Employees Sangh (SCRES) and SCR Mzdoor

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Union (SCRMU); that after consulting it was finalised on 25.10.91 (Annexure A-3 to the reply; that the Chief Personnel Officer, who was the competent authority to issue Avenue Chart of promotion for the Staff and for all categories of Group 'D' Personnel circulated to all the employees in the Carriage Repair Shop, Tirupathi by displaying the same in the notice Boards and communicated to the Supervisors for circulation and copies were also marked to the recognised Unions; that all the employees of the Carriage Repair Shop, Tirupathi including the applicants were fully aware of their promotional avenue in the year 1991 itself; that none had challenged the avenue chart dt. 25.10.91; that being fully aware of the said avenue chart dt. 25.10.91 and also the chances of their promotion suppressed and mislead the Tribunal in obtaining interim orders; that they deliberately relied upon the avenue chart dt. 11.8.87 which was not at all applicable to the Carriage Repair Shop, Tirupathi; that promotions have been made as per the avenue chart dt. 25.10.91 even earlier through Notification dt. 17.10.92 (Annexure-R4). In response to the said Notification 11 applications were received and selection was finalised; that the said selection was not challenged ~~even~~ even though the applicants were not permitted to appear for the Written Test; that in response to the Notification issued on 7.7.93, 12 candidates had appeared for the examination and the candidates included who were working as Peons and Jamedars, etc, in the Office of the A.C.O.S, Tirupathi; that 8 candidates had passed in the Written Examination. Accordingly, a panel consisting of 4 candidates (3 OC and 1 ST) was prepared and published on 30.12.93; that even at that time no Group 'D' employee in the Stores Department had raised any objection; that even ^{after} the panel was released, the respondents initiated negotiations with the recognised Unions and consented

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to promote the selected candidates then only the respondent authorities had issued promotional orders; that the C.P.O. is the competent authority to take into consideration of the representations of the Unions; that it was finally directed to give promotion to the empanelled candidates; that these circumstances clearly establish that the respondents have taken note of the grievances of the Group 'D' employees including the applicants; that one Shyam Sunder Rao, who was originally belonged to the Stores Department was called for selection; - Working as Janitor-peon - that the post of Junior Clerk as while in the Mechanical Department; that he was also selected and posted to the Stores Department as Junior Clerk; that as per the interim order he was sent back to the Mechanical Department as Ferro Printer Operator; that this also clearly indicates that the eligible candidates from the Stores Department were also considered for promotion and that the O.A. has no merits.

13. The respondents have filed a reply stating that the Avenue Chart dt. 25.10.91 was not at all circulated in the Workshop; that the letter dt. 25.1.95 (page 10 to the O.A.) written by the Assistant Controller of Stores clearly indicates that the Avenue Chart dt. 25.10.91 was not at all published; that in case the said Avenue Chart was published there was no reason for the Assistant Controller of Stores to write a letter as detailed in the letter dt. 25.1.95; that the selection was conducted for the vacancies anticipated in 100 units out-turn whereas the Carriate Repair Shop, Tirupathi Workshop out-turn is still 70 units only hence the selection is liable to be cancelled.

14. The main grievance of the applicants in this O.A. is that they are Group 'D' employees working in the Stores Department of the CRS, Tirupathi; that as per the avenue chart for promotion dt. 11.8.87, the posts of Junior Clerks in the Stores Department should be filled up only from the

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Group 'D' Staff of the Stores Department and that not outsider can be posted to the said post of Junior Clerk in the scale of pay of Rs.950-1500. It is the case of the applicants that by inducting the staff from outside the branches/departments they are deprived of their chances^{for} promotion to the next higher grade. They rely upon the avenue chart of promotion dt. 18.8.97 in support of their claim. It is only on the basis of this avenue chart earlier an interim order was passed by this Tribunal on 7.4.95 restraining the respondent authorities from filling up the posts of Junior Clerks in the Stores Wing by posting those who were promoted as Junior Clerks in other units from Group 'D'.

15. It is to be noted that the Notification was issued on 7.7.93 for preparing a panel of 4 posts consisting of 3 OC and 1 ST for considering promotion to the post of Junior Clerks in the Stores Department. The Written Test was conducted on 2.9.93 and viva-voce was conducted on 25.10.93. The respondent authorities prepared a panel dt. 30.12.93 consisting of 4 names. The names of the applicants were not considered for the post of Junior Clerks in the Stores Department.

16. The respondents have contended the point of limitation as well as the point that the O.A. is bad ^{for} non-joinder of the necessary parties. We will consider these 2 preliminary points before going into the merits of the case.

16.(a) As already observed pursuant to the Notification dated 7.7.93 the respondent authorities finalised and published a panel dt. 30.12.93. This O.A. was filed on 7.4.95. In para 5 of the O.A. the applicants submitted that the application is well within the period of limitation as prescribed under Section 21(1) of the Administrative Tribunals Act.

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17. The Notification dt. 7.7.93 allowed the Group 'D' officials of other Departments to participate in the Written and Viva-Voce Tests. A copy of the Notification is at Annexure-I to the O.A. On perusal of this Notification, it is disclosed that Class IV Staff of all Branches were eligible (except Accounts) and Safaiwalas in the Medical Department were not eligible. Class IV officials such as Peons, Jamadar Peons, Record Sorters, Ronee Operators, Ferre Printers, Safaiwalas were eligible to appear for the examination.

18. Applicants No.1 to 6 are Material Checkers and applicants No.7 to 16 are Khalsis. They are working under the control of Assistant Controller of Stores, CRS Tirupathi.

19. If really the applicants were aggrieved by the issue of Notification dt. 7.7.93 wherein competition was open to the Group 'D' officials of other Departments then in the normal course, they should have challenged the Notification itself. They have not done so. Be that as it may, at least when the respondent authorities finalised and published the select panel dt. 30.12.93, they should have approached the judicial forum within the reasonable time thereafter. As already observed the O.A. was filed on 7.4.95. The applicants have not explained any justifiable reasons for filing the O.A. on 7.4.95. On this ground the respondents have submitted that the that the O.A. is barred by limitation.

20. Since the Tribunal had admitted the O.A. for adjudication and parties have filed their reply as well as rejoinder, it may not be justifiable for this Tribunal to decline the relief or to refuse to consider the contentions of the applicants on merits. Knowing fully well that the application is barred by limitation, we do not wish to stop it there. We desire to consider the O.A. on merits.

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21. The other point raised by the respondents is that the O.A. is bad for non-joinder of the necessary parties. It is the contention of the respondents that the 4 officials who were empanelled for promotion to the post of Junior Clerks in the Stores Department as per the select panel dated 30-12-93 are necessary parties. Even accepting for the moment that the application is solely on the avenue chart of promotion selecting dt. 11.8.87, when they were/Group 'D' personnel from outside the Stores department in the select panel dt. 30.12.93, in our opinion, they should have impleaded the empanelled candidates to the O.A. In their absence, no relief can be granted to the applicants. Thus, in our humble view the O.A. is bad for non-joinder of necessary parties.

22. The applicants have relied upon the Avenue Chart for of Promotion dt. 11.8.87. A copy of the Avenue Chart is at pages 16 of the O.A.

23. On the otherhand, the respondents in their counter specifically stated that the Avenue Chart of Promotion dt. 11.8.87 is generally applicable to the South Central Railway Stores Department and that the Carriage Repair Shop at Tirupathi was subsequently established; that the existing rules/regulations of the Avenue Chart of Promotion was to be considered after a lot of consultations with the recognised Unions and officials. After undergoing the said process of the consultation and deliberations, the Avenue Chart of Promotion dt. 25.10.91 was prepared. The Notificatiien dt. 7.7.93 and the select panel was prepared pursuant there to on 30.12.93 are entirely based on the Avenue Chart of Promotion dt. 25.10.91.

24. They specifically stated that this Avenue Chart of Promotion dt. 25.10.91 was duly published in the Carriage Repair Shop and that every employee in the CRS was fully aware of the existence of the said Avenue Chart of Promotion dt. 25.10.91 and that the applicants in order to obtain an interim order

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mislead the Tribunal ~~if~~ by suppressing the same.

25. On the basis of the Avenue Chart of Promotion dt. 25.10.91 excepting the Group 'D' officials of the Medical Department ~~if~~ all other Group 'D' officials of other departments are eligible to participate in the examination for the post of Junior Clerks in the Stores Department. The respondents have produced the Avenue Chart of Promotion dt. 25.10.91 (Annexure R-5 page 7) The respondents have produced certain documents on the basis of the queries raised by this Bench on 20.4.98. They have produced these documents on 5.8.98.

26. The respondents contend that the Avenue Chart of Promotion dt. 25.10.91 was finalised after consultation with the recognised Unions of the Railway Employees. Further, they urged that the said Avenue Chart of 25.10.91 was duly published and circulated in the departments.

27. In order to substantiate their case, they have produced a copy of the letter dt. 3.7.91 wherein they had circulated the Avenue Chart of Promotion for information of the Unions. In that letter Dy. CME, CRS, Tirupathi has stated that the draft avenue chart of promotion for the staff of Group 'D' officials in the cadre of Ministerial (both Personnel and Mechanical) was communicated to both the organised Labour of the Unit vide letter dt. 15.3.91 for their views. Further, it is stated that the organised labour units had accordingly ~~xx~~ submitted their views on the avenue chart of promotion for Group 'D' of Ministerial Cadre and the same was forwarded.

28. They have produced the letter dt. 4.5.91 (Annexure-R3) of the SCRMU. The secretary of the said Union has stated

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that the proposed Avenue Chart of Promotion communicated vide letters dt. 15.3.91 and 12.4.91 was acceptable the Union.

29. Vide letter dt. 10.6.91 (Annexure-R4) of the SCR Employees Sangh, the Secretary of the Sangh has referred to the letter of 15.3.91 and stated that the Sangh had no objection to the proposed Avenue Chart of Promotion for non-Ministerial cadre in the category of Peons of all Departments and Safaiwalas (excluding Medical Department).

30. The Chief Personnel Officer HQs. Personnel Branch, S.C.Rly by its letter dt. 25.6.91 forwarded copies of the Avenue Chart of Promotion for the categories of Peons and Safaiwalas other than the Medical Department of Carriage Repair Shop, Tirupati. It is further stated that the said Avenue Charts of Promotion are to be implemented w.e.f. 25.9.91 i.e. the date on which it was approved by the competent authority. From this letter, it is disclosed that the Avenue Chart of Promotion was actually approved by the competent authority on 25.9.91 and it was communicated to the Carriage Repair Shop, Tirupathi for implementation through letter dt. 25.10.91. It is on this ground, the Avenue Chart of Promotion is generally referred to in the course of this order, as the Avenue Chart of Promotion dt. 25.10.91. As a matter of fact, the said Avenue Chart of Promotion was approved by the competent authority on 25.9.91.

31. The applicants contended that this Avenue Chart of Promotion dt. 25.9.91 was not published in the Carriage Repair Shop, Tirupathi and that they were not aware of the said Avenue Chart of Promotion. By this, they make us to believe that what was in existence on 7.7.93 under which the Notification was issued was the Avenue Chart of Promotion dt. 11.8.87. Having not placed any material to show that the Avenue Chart of Promotion dt. 11.8.87 was the one which was applicable to CRS Tirupathi on 7.7.93, it is not possible to accept their contentions. If really the said avenue chart of promotion was not in existence on 7.7.93, then the applicants or other Group 'D' employees as men of ordinary prudence

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should have challenged the Notification dated 7.7.1993 which permitted the Group 'D' employees of all other departments excepting the Medical Department to participate in the process of promotion of Clerks in the Stores Department.

32. Even the respondents have further submitted that on the basis of the Avenue Chart of promotion dt. 25.10.91 an earlier notification was issued in letter No. TR/P/521/CL/Class-IV and Class-III dt. 17.10.92 on the basis of which promotions were effected upto the post of Junior Clerk. The applicants therefore cannot plead ignorance of the earlier Notification dt. 17.10.92. The respondents have furnished a copy of the Notification dt. 17.10.92 along with their reply. On perusal of this Notification also we are convinced that Group 'D' Staff of all Branches except Accounts, such as Peons, Jamadar Peons, Record Sorters, Ferro Printers, Safailwalias, etc. were eligible to appear for the examination. The applicants have not challenged the said Notification dt. 17.10.92, and selection made pursuant to the said Notification.

33. The applicants have filed rejoinder on 18.9.96. It may be noted that on the basis of the material placed on record by the respondents along with their reply they have filed M.A.361/96 praying for vacation of the interim orders. That M.A. was heard and disposed of on 20.6.96. By the said order, the interim order dt. 7.4.95 was vacated.

34. Thereafter, the applicants filed a rejoinder. They tried to show that to make out a case of the Avenue Chart of Promotion dt. 25.10.92 was not at all circulated as per the rules and that they were kept in darkness.

35. In their rejoinder, they contended that the selection made pursuant to the Notification dt. 7.7.93 was not valid

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as vacancies anticipated out-turn was 100 units whereas CRS Tirupathi out-turn was still 70 units out turn only. We are not concerned either to the 100 units out-turn or the 70 units out-turn. The units out-turn do not in any way affect the promotions to be made. We are concerned whether the Avenue Chart of Promotion dt. 25.10.91 is applicable to the CRS Tirupathi or not. For this the respondents contention is that the Avenue Chart of Promotion dt. 11.7.87 is generally applicable to the SCR Stores Department and that when the CRS Tirupathi was established subsequently they thought of providing the Avenue Chart of Promotion dt. 25.10.91 making the scope for promotion of Group 'D' Staff larger. We do not intend to say that the said Avenue Chart of Promotion was surreptitiously prepared without the knowledge of the recognised Unions of the Railway employees and that the same was implemented much to the disadvantage of the applicants.

36. They have relied upon the letter dt. 25.1.95 of Sri K.V. Janardhan ACOS. We have perused this letter. The ACOS appears to have represented the grievances of the Group 'D' Staff of the Stores Department. On this score, the applicants try to contend that the Avenue Chart of Promotions dt. 25.10.91 was not at all circulated. We are not able to accept their contention in the face of the documents produced on 5.8.98. Merely because the ACOS exhibited ignorance by addressing the letter dt. 25.1.95, it cannot be said that the avenue chart of promotion dated 25.9.91/25.10.91 was not at all circulated. This letter dt. 25.1.95 of the ACOS, CRS Tirupathi, does not take the applicants any further.

37. We are unable to accept the contention of the applicants that the Avenue Chart of Promotion dt. 25.10.91 which was approved by the competent authority on 25.9.91 was not at all circulated in the CRS Tirupathi. Further the respondent

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AUTHORITIES HAVE -----

1992 on the basis of the said Avenue Chart of Premetion.

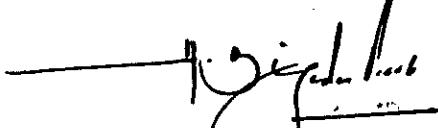
38. The applicants have not challenged the Avenue Chart of Premetion dt. 25.10.91. When the said chart is in force they cannot seek a direction to the respondent authorities to fill up the posts of Junior Clerks in the Stores Dept. against 33 1/3rd LDCE quota from amongst the Group 'D' employees of the Stores Department alone.

39. We find no merits in this O.A.

40. In the light of the above discussions, the only order that can be passed in this O.A. is to dismiss the same. Accordingly the O.A. is dismissed. No order as to costs.

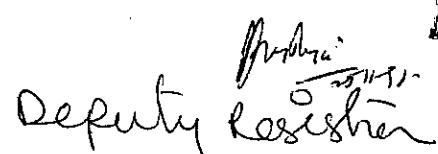

(H.S. JAI PARAMESHWAR)

MEMBER (J)


(H. RAJENDRA PRASAD)

MEMBER (A)

Dated, the 24th November, '98.


Deputy Registrar
5/11/98

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To

1. The Chief Personnel Officer,
SC Rly, Railnilayam, Secunderabad.
2. The Deputy Chief Mechanical Engineer,
Carriage Repair Shop, SC Rly, Tirupati.
3. The Workshop Personnel Officer,
Carriage Repair Shop, SC Rly, Tirupati.
4. One copy to Mr.K.Sudhakar Reddy, Advocate, CAT.Hyd.
5. One copy to Dr. S. S. Rao, SC for Rlys, CAT.Hyd.
6. One copy to HBSJP.M.(J) CAT.Hyd.
7. One copy to DR(A) CAT.Hyd.
8. One spare copy.

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11/2/98
I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE

VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

The Hon'ble Mr. B. S. Sanaparivoo: M(C)
DATED: 24 - 11 1998.

ORDER/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No. 184/95

T.A.No. (w.p.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

30 NOV 1998

हैदराबाद न्यायपीट
HYDERABAD BENCH