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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

M.A.No.611/96 in
O.A.No.67/96.

Date of order : 21.8.1996.

Between

1. Union of India,
Rep. by its Secretary,
Min. of Railways (RB),
New Delhi-1.
2. The Union of India,
Rep. by its Secy., to Govt.,
Dept. of Personnel &
Administrative Reforms,
Min. of Home Affairs,
New Delhi.
3. The Chairman,
Railway Board,
Rail Bhavan,
New Delhi.

.. Applicants/Respondents

And

Shri P.Seshagiri Rao,
Addl. General Manager/SCR,
Secunderabad.

.. Respondent/Applicant

Counsel for the Applicants/
Respondents

Shri K.T.S.Tulsi,
 Addl. Solicitor General with
 Shri Vikas Pahwa &
 Shri V.Rajeswara Rao,
 SC for Rlys.

Counsel for the Respondent/
Applicant

.. Shri L.N.Reddy

C O R A M

Hon'ble Shri Justice M.G.Chaudhari : Vice-Chairman *full*

Hon'ble Shri H.Rajendra Prasad : Member (A)

9/2/96

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01/08/96
Central Administrative Tribunal
DY. Secretary (Estd.)
Ministry of Railways
Ministry of Railways
New Delhi.

M.A.No.611/96 in
O.A.No.67/96.

Date of order : 21.8.1996.

Order

(Per Hon'ble Shri Justice M.G.Chaudhari : Vice-Chairman)

Shri K.T.S.Tulsi, Addl. Solicitor General with
Shri Vikas Pahwa and Shri V.Rajeswara Rao, Addl. Standing
Counsel for the applicants (original respondents).

Shri L.N.Reddy, counsel for the respondent (original
applicant) (Respondent) present.

This is somewhat an unusual application wherein
the original respondents seek clarification of the order
passed by us in the Original Application on 26.4.96.
Ordinarily an order speaks for itself and, if aggrieved
with the same the aggrieved party has to adopt appropriate
remedies in accordance with the law. Indeed as stated
by the learned Addl. Solicitor General, Shri Tulsi, the
applicants have already filed a Special Leave Petition
in the Hon'ble Supreme Court against the order (in the O.A.)
However it is also stated that the S.L.P. is confined to
our conclusion on DITS. The Tribunal after it passes
an order is not expected to offer any clarification of
what it has decided. Shri L.N.Reddy, learned counsel
for the respondent is therefore justified in submitting
that the application is misconceived and no clarification
as sought can be given and the application is liable to be
rejected.

2. We have heard the learned Addl. Solicitor General,
Shri Tulsi. The applicants pray as follows:-

"The Hon'ble Tribunal is, therefore, requested to take
the above clarifications on record and kindly confirm that
the age limit of 2 years to be counted from 1.7.95 is
for the purpose of empanelment only of Shri Rao for
GM's panel for the year 1995-96 and not for appointment.

01/08/1996
Dr. Secretary (Estt)
Ministry of Labour
Government of India
New Delhi

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If empanelled, his appointment would be considered alongwith other empanelled officers as per various provisions of the scheme for appointment of GMs and equivalent."

3. The clarificatory statements which are requested to be taken on record purport to state that the applicants are interpreting para 26 of the judgement to mean that only for the purpose of empanelment in 1995-96 panel Shri Seshagiri Rao's DITS for assigning interse seniority will be reckoned as 9.7.62 and the age limit shall be reckoned w.e.f. 9.7.62 only for eligibility and not for appointment. It is submitted that if he is empanelled in GM's panel for the year 1995-96, his appointment as GM and equivalent shall be considered alongwith other empanelled officers in keeping with the other provisions as provided in the scheme like the residual service of 2 years, predominance factor, clearance for appointment against a specific post etc., as none of the provisions of the scheme has been disturbed or quashed by the order in the O.A. It is further stated that in other words, for appointment as GM, the case of Shri Seshagiri Rao will be considered in keeping with the existing policies and scheme. A direction for confirmation of this course of action is sought by way of clarification so that no contempt may be attributed to the applicants in implementation of the judgement if that course would be adopted.

4. Shri Tulsi submitted that the applicants apprehend that as the operative order employs the words 'as and when appointment of eligible officers -----' it might be construed to mean that at the stage of consideration for appointment as and when occasion arises against a vacancy occurring during the panel-period it will not be open to the respondents to act in accordance with the provisions of the scheme and if they do so it may be alleged that the order contemplated appointment without applying the provisions

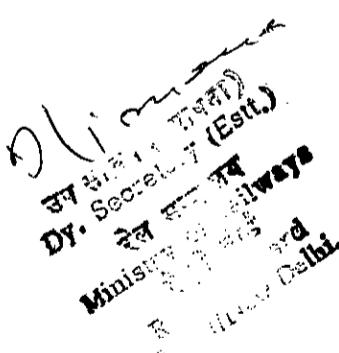
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of the scheme and consequently there has been violation of the order hence the clarification has become necessary to be obtained from this Tribunal. The learned Addl. Solicitor General submitted that as an uniform policy the applicants have been counting the residual service of 2 years from the date of occurrence of the vacancy. He further submitted that the Allahabad Bench of the Central Administrative Tribunal in the case of A.P.S.Sinha Vs. U.O.I. & Ors. (O.A.No.1698/94 decided on 29.9.95) has taken the view that the requirement of residual service of 2 years has to be from a firm date such as occurrence of vacancy to which the candidate is appointed and therefore if the order in the instant O.A. implies that the said period should be counted from the date of empanelment there will arise a conflicting situation and therefore also the clarification has become necessary. Shri Tulsi submitted that according to the applicants the residual service of 2 years should be counted from the date of appointment although the applicants have been so far following the rule of counting the same from the date of occurrence of the vacancy. Thus, whichever way it is looked at a clarification as sought is necessary. It is submitted that the panel period although would be specific but the vacancies that would occur during the period of currency of the panel would not be specific and therefore the question of counting the residual service mentioned in para 7.3 of the scheme has to be applied from the date of appointment/date of occurrence of the vacancy.

5. Shri L.N.Reddy for the respondent submitted that the Miscellaneous Application of this nature is not maintainable. He further submitted that the order speaks for itself and the action of the applicants in seeking clarification of the order shows their lack of bonafides in-as-much as it is

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apparent that they do not want to give the consequential benefit after empanelment to the applicant which has been allowed by this Tribunal removing injustice that was done to him in the matter of assigning him seniority in the Time Scale.

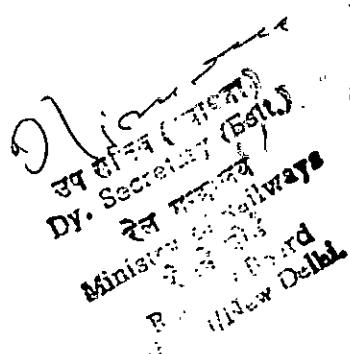
6. Our order is plain and clear. We do not see any ambiguity in the language in which it is couched. The order speaks of reckoning the seniority of the respondent in the Time Scale from 9.7.62 and treating him within the age limit as on 1.7.95 by reference to which date the eligibility is determined. The order clearly states that the Selection Committee shall consider the date of entry of the applicant in the Time Scale as 9.7.62. The order does not contain any direction as to the steps that would follow after the case of the applicant is so considered. The question as to what should be the tests to be applied at the time of making the appointment against a particular vacancy as may occur during the currency of the panel had not been the subject matter of decision in the order as that question had not been raised by the parties. We are not therefore required to give our opinion in terms of the clarification sought by the applicants. Such a question cannot be raised academically. We therefore reject the request of the applicants to give clarification as prayed by them making it clear that the question remains open and we do not express any opinion on that question in these proceedings.

7. The learned Addl. Solicitor General next submitted that the reference to the vacancy occurring as on 31.1.96 in the order is not factually correct in-as-much as there did not arise any vacancy in the post of GM on that date. In that connection it may be noted that in para 4(xi) of the O.A. the applicant had averred that a vacancy in the post of the rank of GM is going to occur by 31.1.96 consequent upon

Office of
DY. Secy. to
Ministry of Railways
New Delhi

the superannuation of the then incumbent of the post of Member (Mechanical) in the Railway Board. There was neither any denial of the same nor any particulars were given in the counter of the present applicants in respect of the factual position relating to that vacancy. Even at the stage of arguments the position was not clarified and therefore the order proceeded on the assumption that the assertion of the original applicant (present respondent) was correct. Shri Tulsi now submits that occurrence of a vacancy in the Railway Board does not ipso facto result in occurrence of the vacancy in the post of GM. The learned counsel for the respondent (original applicant) (the respondent is present) stated that the basis on which the averment was made in the O.A. was that in the vacancy of the Member of the Railway Board since one of the GMs would be appointed there would occur a corresponding vacancy in the cadre of GM and on that footing the respondent had stated that the vacancy was to occur by 31.1.96. Shri Tulsi in this connection stated that the vacancy actually occurred on 21.3.96. The learned counsel for the respondent has no serious objection if the directions contained in the original order are read as applicable to the vacancy that occurred on 21.3.96 instead of 31.1.96.

8. The learned Addl. Solicitor General had a serious grievance about the observations made by us in the minutes dated 22.7.96 and he contends that we have purported to place an interpretation on the order in the O.A. which the applicants would like to controvert. He submitted that since those minutes would be construed as merged in the original order this causes serious prejudice to the applicants and therefore it should be clarified that these are not part of the original order. It is true that we have expressed a *prima facie* opinion about the implication of the original order. Those observations



were made in the context of a request for adjournment and not by way of clarification to the original order as none had sought it and we have not made it after hearing the parties. Hence it needs to be made clear that those observations do not amount to our giving interpretation to the original order which was not required to be done at that stage and the order remains as it reads in the original form.

9. Hence the following order is passed:-

(1) The request for confirming the view of the respondents as stated in para 8 of the Miscellaneous Application is refused in the light of it having been stated above that the said question has not been decided in the judgement and that the order speaks for itself. It is made clear that it would be open to the applicants to comply with the original order in terms thereof with reference to the date of occurrence of the vacancy, namely 21.3.96 instead of with reference to the date 31.1.96 mentioned in the order.

(2) The observations contained in the minutes dated 22.7.96 on the Miscellaneous Application shall be disregarded in construing and implementing the original order.

10. The Miscellaneous Application is disposed of accordingly
No order as to costs.

समाजित प्रति
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नायन लालकरि
NAYAN LALKARI

COURT OFFICER

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