

50

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH:AT HYDERABAD.

O.A. NO.959 of 1996.

Date of Order :- 3rd September, 1998.

Between :

P. Kullayappa, s/o Kullayappa
aged about 23 years,
R/o D.No.1-221/14,
Modinabad, Guntakal,
Ananthapur District.

... Applicant

And

1. The Union of India
through Secretary,
Government of India,
Ministry of Railways,
New Delhi.

2. The Divisional Railway
Manager(Personnel),
South Central Railways,
Guntakal.

3. The General Manager,
S.C.Railway,
Rail Nilayam,
Secunderabad.

... Respondents

Counsel for Applicant : Mr. R. Briz Mohan Singh

Counsel for Respondents : Mr. C.V. Malla Reddy, CGSC

CORAM :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE- CHAIRMAN

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER(ADMN.)

O R D E R.

(Per Hon.Mr.Justice D.H.Nasir, Vice-Chairman)

1. Heard Mr. R. Briz Mohan Singh, learned counsel for the applicant and Mr. C.V.Malla Reddy, learned Standing Counsel for the respondents.
2. The applicant in this O.A. seeks a relief from this Tribunal that the respondents be directed to appoint the applicant in Group 'C' post in South Central Railway Service by taking into consideration his educational qualifications and performance during the selection process.

3. The appointment is to be made on compassionate grounds.

4. The applicant's father who was working as Pointsman (PM/GTL) in the second Respondent Division was medically declassified on account of Epilepsy and according to him, he retired on medical ground after service of more than 30 years. The applicant claims to be fully qualified for appointment to any Group 'C' post in the railways and made an application for appointment to any post commensurate with his educational qualifications on compassionate grounds. The applicant was allowed to appear at the Written Test on 12.6.1993 by the respondents. He was declared qualified in the written test for the post of Artisan only and appeared for viva voce test on 11.1.1994. But for 1½ years the applicant did not get any information from the respondents regarding his appointment. On 11.11.1995 after the applicant made a representation on 11.6.1995, he received a telegram directing him to report to the second respondent's office with particulars of his age, educational qualifications, Community certificate in original etc. on 23.11.1995. The applicant complied with the said direction; but was shocked and surprised to know from the second respondent that he was called for appointment to a Class IV (Group 'D') post. The applicant expressed his unwillingness to accept the Group 'D' post on the ground that he was neither informed about the marks secured by him in the interview nor was he informed that his case was considered only for Group 'D' post. Further, according to the applicant, the Senior Divisional Personnel Officer informed him that the entire selection was under review and as soon as decision was taken by the Headquarters of third respondent, the applicant's case would be considered for Group 'C' post. The applicant unwillingly joined the Group 'D' post and he was posted to Class IV Traffic Centre, Bellary for training which the applicant attended from 5.2.1996 to 1.4.1996 and thereafter he was

posted as L.R. Porter on 30.4.1996.

5. The Tribunal's attention was drawn in course of hearing that by order dated 27.10.1994 in O.A.No.670/94 this Tribunal had held that in determining the post to which a candidate could be appointed, the facts relevant to be considered were, qualifications, eligibility and suitability of the candidate. Once the Selection Committee recommended that the candidate was to be appointed to a Group 'C' post, the third respondent had no jurisdiction to alter the same. This question is looming large even in the present O.A.

6. According to the respondents, the applicant did not secure the minimum qualifying marks i.e. 35% in the viva-voce test. He secured only 25% marks and therefore, the applicant was not considered eligible for the post of Artisan and a non-Artisan post of Group 'C' category and therefore, he was offered appointment in Group 'D' post.

7. At the outset we may point out that the appointment on compassionate grounds could be made only if the existing employee dies in harness. Decategorisation of an employee on account of medical unsuitability does not afford a ground for compassionate appointment to any member of his family. However, in the present case, the respondents have refrained from questioning the suitability of the applicant's appointment on compassionate grounds in spite of the fact that the applicant's father retired voluntarily on medical grounds.

8. As far as the selection of the applicant by the Secreening Committee for his appointment to a Group 'C' post is concerned, prima facie it would appear that it was not in fitness of things for the General Manager, South Central Railway (respondent No.3) to deviate or over-rule the selection made by the Secreening Committee of a candidate for a particular post, unless he recorded in writing the grounds for deviating from the selection/recommendations made by the Secreening Committee. The sanctity of the Screening Committee shall stand

reduced to a nullity if the General Manager is considered to be empowered to disregard the recommendations of the Screening Committee without recording reasons for the same. The Screening Committee enjoys the status of a statutory body inasmuch as the Railway Board by its letter No.E(NG)-II/84/RC-I/174 dated 25.6.1985 stipulated in Clause (iv) of paragraph-2 as follows :

"(iv) It is not necessary that the word of a Group 'D' employee should be appointed in a Group 'D' post only. If such a ward is eligible for compassionate appointment and possesses the qualification prescribed for a Group 'C' post in which compassionate appointment is permissible, his case for such appointment should be considered."

A note is also required to be taken of the Board's letter dated 2.11.1989 (Annexure-10), paragraphs- 1 & 2 which are relevant for the purpose of this case are reproduced below :

"Attention is invited to instructions contained in Board's letter No.E(NG)-III/78/RC-I/1, dated 2.6.81 and E(NG)III/79/RC-I/62 dated 5.3.82. These instructions on join that candidates considered for appointment on compassionate grounds should be subject to suitability test before appointment by a Committee of three Senior Scale Officers, and of whom should be a Personnel Officer. It was added that the selection should be conducted keeping compassion in view. The scope of such test was also indicated.

2. Board had occasion to review the matter recently. In the light of such review, Board have now decided that suitability of those proposed to be appointed on compassionate grounds should be properly assessed by a strict test. In case the candidate has the necessary minimum qualifications for employment in Group 'C' posts, his suitability for all types of Group 'C' posts in order of suitability,

should be judged and recorded by the Screening Committee, which should also clearly indicate the categories for which the candidate has not been considered suitable. Final offer of appointment will, however, be subject to availability of vacancies, passing of medical examination, production of necessary certificates etc. Attention in this connection is also invited to instructions contained in para 2 of Board's letter No. E(NG)-II/84/RC-I/174, dated 25.6.85."

9. It becomes quite evident from the above directions of the Railway Board that the suitability for appointment of the candidates for all types of Group 'C' posts on compassionate grounds, should be judged and recorded by the Screening Committee. In our opinion, therefore, the Screening Committee which is a body consisting of senior officers of the railways would be deprived of its sanctity by ignoring the suitability of the candidates made by the Committee and making deviations from such recommendations without recording any reasons therefor.

10. In O.A.No.670/94 decided on 27.10.1994 in the concluding part of its order, this Tribunal observed that once the family needed employment assistance then in determining the post to which the candidate should be appointed, the facts relevant to be considered were the qualifications, suitability of the candidate and availability of vacancies; and the question which fell for consideration was whether the General Manager reasonably and rightfully rejected the appointment of the applicant to a Group 'C' post. It was further observed in the said order that since the Divisional authorities recommended that the applicant could be appointed to a Group 'C' post on the basis of the marks obtained by him in written and viva-voce tests, the decision of the General Manager to appoint the applicant in Group 'D' post was not on any legitimate basis and eventually, disposed of the O.A. by

directing the respondents to consider the applicant for appointment to a Group 'C' post at the earliest opportunity.

11. On the question whether the General Manager could deviate from the recommendations of the Screening Committee without recording his satisfaction for the same, the Hon'ble Supreme Court in Mrs. Asha Kaul and another v. State of Jammu & Kashmir and Ors (JT 1993(2) S.C.688) held that the Government cannot pick and choose candidates out of the list. Where in respect of any particular candidate if any material was discovered disclosing his involvement in any criminal activity, the Government can always refuse to appoint such person, but this would not be a case touching the select list prepared and recommended by the Commission.

12. Of course, the Hon'ble Supreme Court very clearly held that -

" By merely approving the list of twenty, there was no obligation upon the Government to appoint them forthwith. Their appointment depended upon the availability of vacancies. A reading of Rule 41 makes this aspect clear. The list remains valid for one year from the date of its approval and publication. If within such one year, any of the candidates therein is not appointed, the list lapses and a fresh list has to be prepared. ..."

13. In view of the facts and circumstances as well as the proposition of law being as stated above, we do not see any reason why the applicant's claim should be rejected.

14. In any case, it is for the respondent No.3 to take a final decision on the basis of the proposition of law as emerging from the above discussions. Hence the

present O.A. is disposed of with a direction to the respondent No.3 to re-consider the applicant's case for appointment to any post in Group 'C' category in South Central Railways as and when vacancy arises.

There would be no order as to costs.



(H. RAJENDRA PRASAD)
MEMBER (ADMN.)

(D.H. NASIR)
VICE-CHAIRMAN.

DATED THE 3RD SEPTEMBER, 1998.

DJ/

*Ansari
3 P.P.
Deputy Registrar*

0.A. 959/96.

To

1. The Secretary, Union of India,
Govt. of India, Ministry of Railways,
New Delhi.
2. The Divisional Railway Manager (Personnel)
SC Rly, Guntakal.
3. The General Manager, SC Rly
Railnilayam, Secunderabad.
4. One copy to Mr. R. Briz Mohan Singh, Advocate, CAT. Hyd.
5. One copy to Mr. C. V. Malla Reddy, SC for Rlys, CAT. Hyd.
6. One copy to DR(A) CAT. Hyd.
7. One spare copy.

pvm.

23/9/96
TYPED BY
CHECKED BY

I COURT
COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE D.H.NASIRI
VICE-CHAIRMAN

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

DATED: 3-9-1998.

ORDER/JUDGMENT

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

O.A.NO. 959/96
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.

pvm.

