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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 439 OF 1997

Dated, the 15th March, '99

BETWEEN :

Ch. Sambasiva Rao

.... Applicant

A N D

1. Union of India, rep. by General
Manager, South Central Railway,
Secunderabad.
2. Divisional Railway Manager,
South Central Railway,
Vijayawada.
3. Sr. Divisional Personnel Officer,
South Central Railway,
Vijayawada.

... Respondents

COUNSELS :

For the Applicant : Mr. E.B. Vijaya Kumar

For the Respondents : Mr. J.R. Gopala Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

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

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O R D E R

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

1. Heard Mr. P.B. Vijaya Kumar, Learned Counsel for the applicant and Smt. Shakthi for Mr. J.R. Gopal Rao, Learned Standing Counsel for the respondents.
2. The applicant in this O.A. is a Head Clerk and his name was included for consideration for the post of OS Gr.II in the office of Sr.DEE/M/BZA vide memorandum dated 1.3.95 (Annexure-II, Page 7 to the OA). The applicant's contention is that the number of vacancies notified for filling up is 7, whereas the administration filled up only 6 vacancies and the 7th vacancy remains unfilled and was filled by one Smt. Elizabeth Amma who has been promoted on the basis of the directions given by this Tribunal in some other O.A. The applicants relying on the Serial Circular No.163 of 1986/ submitting that once vacancies are included that number cannot be changed without any proper approval from the competent authority. He also submits that once admitted to the selection the select list will generally contain the number of vacancies notified.
3. The said selection was finalised and 6 employees were empanelled for the post of OS Gr.II vide memorandum dt.10.4.95 (Annexure-I to the OA)
4. This O.A. is filed to declare that the proceedings No.B/P.608/II/Clerks/Vol.II dt. 10.4.95 in so far as restricting the panel to six candidates is arbitrary, illegal and for a consequential direction to include the applicant's name also against the 7 vacancies as notified and post him as

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OS Gr.II with all consequential and attendant benefits from the date on which all others are promoted.

5. A reply has been filed in this O.A. The main contention of the respondents in this OA is that even though 7 posts were notified as vacancies in the OS Gr.II one of the vacancies was to be allotted to one Smt. Elijabethamma in view of the direction of this Tribunal in OA. 848/93, decided on 5.9.94, whereby the mutual transfer order issued by CPO Secunderabad was set aside and the said Elijabethamma was retained, retaining her original seniority and considering her promotion to the grade of Office Superintendent against restructured vacancy from the date her juniors were considered and promoted.

6. The respondents submit that they admit that in terms of Serial Circular No.163/86 selection has to be done strictly taking the existing vacancies and anticipated vacancies into consideration, but for the reasons beyond their control that vacancy could not be considered as the order of this Tribunal in O.A.848/93 had to be fulfilled. In view of the above, the respondents submit that the O.A. is devoid of merits and has to be dismissed.

7. An employee has a right for consideration of his promotion. He has no right for promotion if he is not otherwise eligible for enlisting him in the panel. Even if enlisted in the panel he has no right for promotion. However, in the present case, the number of vacancies which has to be assessed as 7 had to be reduced due to the order of this Tribunal in this O.A.848/93. Hence, it cannot be said that the respondents have erred in assessment of the vacancy. It has to be held that the reduction in number of vacancies is only due to the reasons beyond their control, as at the time

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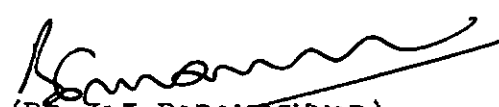
of assessment, the judgment in O.A.848/93, was not available before the respondents. In that view of the matter, it cannot be said that the respondents have not followed the instructions contained in S.C. No.163/86.

8. The applicant, if he is 'Outstanding', he should have been shown at Serial No.1 in the Memorandum dt. 10.95. It has to be held that the applicant was even if selected would have figured only at Srl. No.7 of that Memorandum dt. 10.4.95. As there ^{were} ~~are~~ only 6 vacancies, the applicant could not be empanelled.

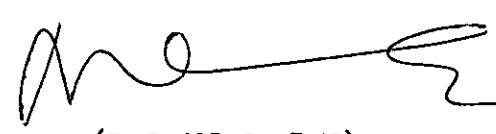
9. In that view of the matter, it cannot be said that the Memorandum dt. 10.4.95 is irregular or illegal or the name of the applicant should be included in that Memorandum.

10. In view of what has been stated above, the O.A. is liable to be dismissed.

11. The O.A. is accordingly dismissed. No order as to costs.

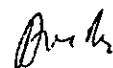

(BS JAI PARAMESHWAR)
MEMBER (J)

17.3.99


(R. RANGARAJAN)
MEMBER (A)

Dated, the 16th March, '99

Dictated in Open Court.


15.3.99

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Copy to:

1. HDHNS
2. MHRP M(A)
3. HBSJP M(J)
4. D.R. (A)
5. SPARE

1st AND 11ND COURT

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

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

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

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

THE HON'BLE MR. B.S. JAI PARAMESWAR:
MEMBER (J)

DATED: 16-3-99

ORDER/ JUDGEMENT

MA./RA./CP.No.

IN

C.A. NO. 439/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

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