

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

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ORIGINAL APPLICATION NO.1169/99

DATE OF ORDER : 25-4-2000

Between :-

C.Venkateswar Rao

..Applicant

And

1. General Manager,  
Rail Nilayam, S.C.Railway,  
Sec'bad.
2. Chief Personnel Officer,  
Rail Nilayam, SC Railway,  
Sec'bad.
3. Sr.Divisional Personnel Officer,  
S.C.Railway, Vijayawada.
4. Secretary, Railway Board,  
Rail Bhawan, New Delhi.

..Respondents

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Counsel for the Applicant : Shri P.P.Vittal

Counsel for the Respondents : Shri D.F.Paul, SC for Rlys

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CORAM:

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

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

(Order per Hon'ble Shri R.Rangarajan, Member (A) ).

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..2.



(Order per Hon'ble Shri R.Rangarajan, Member (A) ).

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Heard Sri M.V.Krishna Mohan, ~~for Sri P.P.Vittal~~, learned Counsel for the applicant and Sri D.F.Paul, learned Standing Counsel for the Respondents.

2. The applicant in this OA wrote the selection test for the post of Law Assistant. He applied for the same in response to the notification dated 21-9-1992. The written and viva-voce tests were held for filling up the post in view of notification No.P.C. 605/Law/vol.V dated 21-9-1992 (Annexure-1 page-12 to the OA). Two officials were placed in the part panel select list for promotion to the post of Law Assistant as can be seen from the memo dated 11-3-1993 (Annexure-2 page-15 to the OA). Eventhough the applicant wrote the examination, he was not empanelled. Subsequently the applicant was promoted on adhoc basis as Law Assistant by Office Order No.PG/15/94 dated 3-3-1994 (Annexure-3 page-16 to the OA). In between there were lot of litigations in regard to the Recruitment Rules for promotion to the post of Law Assistant as Law Assistants were <sup>selected</sup> ~~xxxx~~ calling for volunteers from all departments. A question arose whether under such circumstances the seniority mark can be given to the senior people for empaneling them as Law Assistant. Initially in OA 1039/90 this Tribunal had held that even for Law Assistants seniority marks is permissible in accordance with the IREM para-320. However, that was challenged by filing SLP in Supreme Court. The Supreme Court held in that case that the seniority mark is not permissible for law Assistants / <sup>selection</sup> as they are being selected calling for volunteers from various

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seniority groups. In view of that, the panel which was challenged in OA 1039/90 was revised. Subsequently the present selection came up for consideration. In that, OA 134/93 was filed wherein present the applicant was the Respondent No.4. That OA was disposed of by order dt.2-7-1996 dismissing the same as the applicant in that OA withdrew the O.A. on the ground it <sup>was</sup> ~~is~~ not pressed. The Supreme Court in the earlier OA passed order on 15-3-1996. In view of that it may be possible that OA 134/93 was not pressed and hence that OA was dismissed by order dated 2-7-1996, after the Supreme Court judgement.

3. The name of the applicant was inserted in the panel as a 3rd candidate by memorandum No.P/C/605/Law/LAs dated 12-5-1997 (Annexure-4 page-17 to the OA). That would mean that the applicant got seniority as Law Assistant with effect from 11-3-1993 when the part panel was issued earlier. It is seen that the insertion of the applicant as empanelled candidate as Law Assistant was issued on 12-5-1997. On that day the respondents know that the applicant got his seniority with effect from 11-3-1993.

4. Mrs.Satyavathi came on request transfer from Central Railway and joined South Central Railway on 13-4-1993. At that time the applicant was <sup>not</sup> empanelled as Law Assistant. He was treated as junior to Mrs.Satyavathi even though he was promoted on adhoc basis in the year 1993. But on 12-5-1997 the seniority of the Law Assistant is known as he was given his seniority with effect from 11.9.1993. Subsequently by order No.B/P.608/IX/Law Asst. dated 10.6.1997 (Annexure-6 page-20 to the OA) the applicant was regularised as Law Assistant in Bezawada Division. Subsequently

the applicant was treated as senior to Mrs. Satyavathi and hence he was promoted as Chief Law Assistant by order No. B/P.535/IX/CLA dated 18-11-1997 (Annexure-8 page-22 to the OA) and his pay was fixed by that order. It is stated in that order that the applicant is entitled for actual monetary benefits as CLA from 22.9.97 i.e. from the date he assumed higher responsibilities in the scale of Rs.2000-3200.

5. The applicant submitted a representation dated 7-1-1998 for giving him arrears of pay right from the date when Mrs. Sathavathi was promoted as CLA by his representation referred to above. That was examined and that request was rejected by the order No. P/C/535/LAW/CLAs dated 20.1.1999 (Annexure-10 page-25 to the OA).

6. This OA is filed to quash the proceedings No. P/C/535/LAW/CLAs dated 20.1.1999 by holding the same as illegal and untenable and to declare that the last sentence of para-228(1) of IREM is illegal and for a consequential direction to the Respondents 1 and 2 to pay the arrears of pay and allowances for the period of notional promotion as Chief Law Assistant i.e. from 25-7-1995 to 21-9-1997 to the applicant.

7. The main contention of the applicant is that the last sentence of para-228(1) of IREM <sup>had been</sup> ~~xx~~/set aside by the Bangalore Bench of the C.A.T. whereby it was held that ~~error~~ <sup>due</sup> if the promotion is not given earlier/to the error on the part of the respondents, the notional fixation is not permissible and full arrears

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have to be given.

8. The Respondents submit that there are no errors in fixing the notional promotion of the applicant and it was delayed because of the pending cases in the CATs as well as in the Supreme Court and when the Supreme Court laid down <sup>the</sup> law, then the whole process was reviewed and the applicant was empanelled as per order dated 12-5-1997 and immediately thereafter the respondents promoted the applicant as CLA on par with Mrs.T.Satyavathi and hence there is no need to give the arrears when Mrs.Satyavathi was promoted as CLA.

9. The issue of selection panel for the post of Law Assistant was delayed in view of the challenge to para-320 of IREM wherein the seniority mark is allowed. However, in view of the Supreme Court judgement in Ram Jayram's case the seniority mark is not permissible in the selection for selection as Law Assistant. That order of the Supreme Court was issued on 15-3-1996. Before that date the law had not crystalised. The Supreme Court by order dated 15-3-1996 cleared the doubt that in the selection for the Law Assistant seniority mark should not be given. Hence it has to be held that the law is known to everybody only from 15-3-1996. The applicant was empanelled from 11-3-1993 by order dated 12-5-1997. The OA 134/93 was also disposed of on 2-7-1996. Under the above circumstances the empanelment of the applicant on 12-5-1997 appears to be a delayed one. When the law is known on 15-3-1996 and the OA pending in CAT disposed of on 2-7-1996 <sup>it is not known</sup> why the panel of Law Assistant inserting the name of the applicant in that panel <sup>was</sup> issued <sup>only on 12-5-1997.</sup> ~~There is no reason to issue the final panel~~

inserting the name of the applicant<sup>to be</sup> Had it been issued immediately after 2-7-1996 it <sup>was</sup> possible that the applicant could have got his promotion as CLA much earlier to 18-11-1997. Hence it is to be held that the delay on the part of the respondents cannot be condoned in issuing the select panel of Law Assistant inserting the name of the applicant in the panel beyond 2-7-1996. Even presuming that some delay<sup>had</sup> taken place to ascertain the position after disposal of OA 134/93 on 2-7-1996, it cannot be very much away from the date of disposal of OA 134/93 i.e. 2-7-1996. Probably it could have<sup>been</sup> issued on or <sup>before</sup> 1-8-1996. Hence empaneling the applicant by order dated 12-5-1997 itself is a belated one. On 2-7-1996 the seniority position of the applicant is well known vis-a-vis Mrs.T.Satyavathi. The applicant was given proforma promotion with effect from 11-9-1993. On that day the seniority position as per the entry of Mrs.T.Satyavathi in the S.C.Railway is also known. Hence the applicant could have been promoted on 1-8-1996 as CLA on par with Mrs.Satyavathi but that was also not done and the applicant was promoted much later i.e. on 18-11-1997. That in our opinion is due to the inaction of the respondents in finalising the seniority of the applicant on par with Mrs. Satyavathi.

10. From the above narration of the facts, it is evident that there is no error on the part of the respondents to fix the seniority of the applicant till 1-8-1996. Hence the applicant cannot get the arrears from the date Mrs.Satyavathi was promoted as CLA till 1-8-1996; but inaction on the part of the respondents further delayed the promotion of the applicant for the post of CLA. Hence the applicant is entitled for payment of arrears as CLA from


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1-8-1996 onwards instead of 22-9-1997, fixing his pay notionally as CLA from the date Mrs.Satyavathi was promoted as CLA.


11. In view of the above, the respondents are directed to pay arrears to the applicant in the post of CLA from 1-8-1996 on the basis of his notional fixation of pay as CLA from the date when Mrs.Satyavathi was promoted as CLA.

12. With the above direction, the O.A is disposed of. No order as to costs.

  
(R.RANGARAJAN)  
Member (A)

  
(D.H.NASIR)  
Vice-Chairman

Dated: 25th April, 2000.  
Dictated in Open Court.

  
30/5/20

avl/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYD. AD.

COPY TO:

1. HDHND ✓
2. HRN (ADMN) MEMBER ✓
3. HBSJP (JUDL) MEMBER ✓
4. D.R. (ADMN) ✓
5. SPARE ✓
6. ADVOCATE ✓
7. STANDING COUNSEL ✓

*Handwritten signature and initials*  
C. G. M., C. P.

1ST AND 2ND COURT

TYPED BY \_\_\_\_\_ CHECKED BY \_\_\_\_\_  
COMPOSED BY \_\_\_\_\_ APPROVED BY \_\_\_\_\_

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

THE HON'BLE MR. R. RANGARAJAN  
MEMBER (ADMN.) ✓

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

*Handwritten signature and date*  
7/6/2000

DATE OF ORDER 25/4/2000

MA/RA/CP.NO.

IN

GA.NO. 1169/99

ADMITTED AND INTERIM DIRECTIONS  
ISSUED.

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

*Handwritten signature*  
J. S. Puri

