

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO. 892 OF 1999

DATE OF ORDER: 20.9.2000

Between:-

Wanjara Bhawan Rao.

...APPLICANT

AND

1. Divisional Railway Manager,
Hyderabad Division,
South Central Railway,
Secunderabad.
2. The Senior Divisional Personnel Officer,
Hyderabad Division,
South Central Railway,
Secunderabad.
3. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
4. The Principal,
Railway Higher Secondary School,
Marati Medium, PURNA - 431511,
Maharashtra State.

...RESPONDENTS

COUNSEL FOR THE APPLICANT : Mr P. Krishna Reddy

COUNSEL FOR THE RESPONDENTS : Mr J.R. Gopala Rao, SC

CORAM

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

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

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

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Heard Mrs.Sarada for Sri P.Krishna Reddy, learned counsel for the applicant and Sri V.Bhimanna, learned standing counsel for the respondents. Sri C.V.Narayana, Senior D.P.O . present with records and assisted the Court.

2. The applicant was selected as Trained Graduate Teacher (English), Marati Medium in the scale of Rs.1400-2600, ⁱⁿ In response to Employment Notice No. HYB/01/95/SC dated 5-8-1995. He was appointed as Substitute TGT (English) in Marati Medium in the Scale of pay of Rs.1400-2600 in an existing vacancy and was posted in Railway Higher Secondary School (Marati Medium), Purna and joined duty on 8-7-1996 and worked till 30.4.1997 i.e. till the end of acadamic year. The applicant ~~is~~ apprehending that his services will be terminated at the end of ^{the} acadamic year ^{had} approached this Tribunal in OA 225/98 which was decided on 13.4.1998 (page-10 to the OA), where in it is held as follows :-

(a) the applicant should be continued without discharging him during the summer vacation till such time a S.T.candidate is posted either by promotion or by direct recruitment;

(b) if in the meanwhile regularisation of his services on the basis of his eligibility as per the rules is permissible, then the applicant shall be continued and considered for regularisation as per law on that basis.

3. Accordingly the applicant was continued during the summer vacation of 1997. However, the respondents issued employment notification No.HYB/01/99/SC dated 8-5-99 inviting applications for recruitment to appointment of TGT (English), Marati Medium.

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so, the vacancy based roster (200 point roster) had necessarily to be discontinued as post based roster had to be introduced in terms of instructions contained in Railway Board's Lr.No.95(E) SCT/1/49/5(1) dated 21.8.97. The post based roster when drawn up according to the instructions of the Railway Board, it had emerged in the following manner :

		Shortfall		
		<u>SC</u>	<u>ST</u>	<u>OBC</u>
RP 1	- UR-Smt.Urmila (UR)	-	-	-
2	- OBC-Sri Digamber(UR)	-	-	1
3	- UR-Sri Malade (UR)	-	-	1
4	- SC-Sri Dadaleram (SC)	-	-	1
5	- UR-Sri Raut (UR)	-	-	1

Replacement

- 1 - UR
- 2 - ST
- 3 - UR
- 4 - OBC
- 5 - UR
- 6 - SC
- 7 - UR
- 8 - UR
- 9 - OBC

Thus they submit that the next vacancy was against RP-6 to be filled by OBC candidate and S¹ point further ahead. Hence when the Employment Notice No.1/99 was issued on 6/8.5.99 for recruitment to the post of TGT it was reserved to OBC against shortfall vacancy of OBC. This is in agreement with the extant rules and not doing so ^{may} ~~is~~ tantamount to violation of the law laid down by ^{the Hon.} Supreme Court in R.K.Sabarwal Vs. State of Punjab and consequent instructions issued by ^{the} Railway Board under their reference dt.21.8.1997.

5. The respondents further submit that one D.Valliamma, Substitute Asst.Teacher before the High Court of A.P., Hyderabad


In the said notification the vacancy position was indicated as SC-Nil, ST-Nil, OBC-1, Ex-Ser-Nil, UR-Nil, Total-1. In the notification dated 8-5-99 the post was reserved for OBC. The applicant ^{is} feeling aggrieved by reserving the post for OBC which was in fact earmarked for ST candidate. Hence he has filed this application to declare the Employment Notification dated 8-5-99 issued by Respondent No.1 in de-reserving the ST vacancy as OBC as illegal and without jurisdiction and further direct the respondents to continue the applicant as substitute Trained Graduate Teacher (English) Marati Medium and further direct the respondents to regularise the services of the applicant as Trained Graduate Teacher (English) Marati Medium with all consequential benefits.


4. The respondents have filed a reply. They submit that earlier notification No.1/95 dated 5-8-95 issued reserving the post to SC employee as per 200 point roster as per ^{the} Railway Board ~~as per Railway Board~~ letter dated 10.11.1993. In fact 3 posts were advertised 1 for Trained Graduate Teacher (English) against Roster point 1 (Scheduled caste) 1 for Trained Graduate Teacher (Drawing) against Roster Point-2 (unreserved) and 1 for Trained Graduate Teacher (Librarian) against Roster point 3 (Scheduled ^{vations} Tribe). Hence total ~~reser~~ were exceeded 50% of the posts advertised, 3rd post was catered to unreserved treating ^{the} Scheduled Tribe as having fallen into shortfall. Next Employment Notice No.1/97 was released on 18.1.97 inviting applications for the post of Trained Graduate Teacher (English) fallen ^{ing} vacant on account of Sri Shinde vacating the post on promotion to the post of Post Graduate Teacher. This vacancy was reserved to Scheduled ^{as per} Tribe candidate to this Employment Notice dated 18.1.97. while ^{...}

various instructions/orders issued from time to time. The respondents also did not take up this case to the Higher Forum if they ^{were} ~~are~~ aggrieved by the earlier judgement of this Tribunal. We are of the opinion that the respondents need not have waited for the instructions from the Railway Board, as the ^{decision of the} Supreme Court Judgement is very clear. When the representation of the SC and ST is to the extent of 7½ and 15% then the roster deemed to have been closed. If that be the case why they ^{could} ~~cannot~~ check ^{the} ~~over~~ position when the order ^{was} ~~is~~ passed in 1998 in ^{the} ~~an~~ earlier O.A.

8. Considering all this positions, we are of the opinion that the earlier judgement passed should be adhered to i.e. till such time an ST ^{Candidate posted} ~~is substitute~~, the applicant should be continued as ^{such} ~~ST~~. However, the respondents are at liberty to regularise applicant's services in accordance with the rules in the mean-
^{if and an occasion arises} time. We do not stand in the way of the respondents to issue notification to OBC candidate if it is required in the rules ^{for} ~~of any other vacancy~~.

9. The O.A. is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
20.9.2000 Member (J)


(R. RANGARAJAN)
Member (A)

Dated: 20th September, 2000.
Dictated in Open Court.

avl/



seeking for regularisation without subjecting to selection as per an employment notification against the orders of this Tribunal in OA 578/99 which was dismissed on 17.11.99. Thus they justified reserving the post to OBC by the impugned notification dated 8.5.99.

5. The applicant ^{has} filed ^{the} rejoinder.

6. Earlier, when we directed the respondents to continue the applicant till a regular candidate is posted, we meant a candidate belonging to ST candidate is selected. Further, we also directed that if the applicant became eligible for regularisation, then his case may be considered for regularisation in accordance with the rules.

7. At that time the respondents had not brought to our notice the instructions issued by the Railway Board dt.31.8.1999, 21.8.97 and also not filed any application to review but ^{now} contend that in view of changed instructions of the Railway Board they have to restrict the post based reservation. Further, they have ^{not} ~~so~~ approached the ^{appellate} ~~higher~~ judicial forum against the directions issued by the Tribunal. This Tribunal gave directions only on the basis of the material ^{then} available. At that time the applicant was continued. If there is any change in the Railway Board instructions, the same should have been brought to the notice of the Court. The respondents failed to do so. Even after review of the decision by the Railway Board, the respondents failed to file an application of Review. Even if the R.A. is treated to be a belated one, the prayer of the respondents could have been substantiated their case due to the

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDERABAD

COPY TO:-

~~1ST AND 2ND COURT~~

1. HDHND

TYPED BY CHECKED BY
COMPARED BY APPROVED BY

2. HRRN (ADMN) MEMBER

3. HBSJA (JUDL) MEMBER

THE HON'BLE MR. JUSTICE DH. NASIR
VICE-CHAIRMAN

4. D.P. (ADMN)

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

5. SPARE

THE HON'BLE MR. BS. JAI PARAMESHWAR
MEMBER (JUDL)

6. ADVOCATE

7. STANDING COUNSEL

DATE OF ORDER 20/9/2000

MA/DA/CP.NA

IN

DA.NB. 892199

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

(8 copies)

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

~~ORDER/REJECTED~~

~~NO ORDER AS TO COSTS~~

