

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.1037/99

dt. 26-9-2000

Between

D.V. Chandrasekhar : Applicant

and

1. General Manager  
SC Rly., Railnilyam  
Secunderabad

2. Chief Personnel Officer  
SC Rly., Railnilayam  
Secunderabad

3. G. Butchaiah  
Sr. Personnel Officer(Traffic)  
o/o Chief Personnel Officer  
SC Rly., Railnilayam  
Secunderabad

: Respondents

Counsel for the applicant : K. Sudhakar Reddy  
Advocate

Counsel for the respondents : V. Rajeswara Rao  
SC for Railways

Coram

Hon. Mr. R. Rangarajan, Member (Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl)

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Order

Oral order (per Hon. Mr. B.S. Jai Parameshwar, Member(J))

Heard Mr. K. Sudhakar Reddy, learned counsel for the applicant and Mr. V. Rajeswara Rao, learned counsel for the respondents.

2. The applicant herein was appointed as Server in Commercial Catering Department in the pay scale of Rs.775-1025 and posted in Vegetarian Refreshment Room, Railway Station, Raichur. He belongs to ST Community. The next promotion to the applicant is to the post of Assistant Catering Manager, in the pay scale of Rs.975-1540 in Commercial catering department. The applicant submits that he is eligible to be promoted after a course of selection. While 33 1/3% of posts in that category of Assistant Catering Managers ought to be filled up by promotion from amongst the volunteers from Group-D cadres of Commercial Catering Department by course of selection, and the rest of the vacancies are <sup>to be</sup> filled by direct recruitment.

3. The respondent No.3 in order to fill up 12 (9UR, 2 SC, and 1ST) vacancies in the category of Assistant Catering Managers against 33 1/3% promotion quota initiated a selection by notification dated 30-12-1993. One of the conditions for eligibility for selection was minimum three years of service in the feeder category. He submits that this condition was not applicable to the officials belonging to SC/ST communities as per provisions of para 189 of IREM, Vol.I of the revised edition, 1989. The applicant submits that the Respondent No.3 failed to observe the said rule and made a specific mention in the notification about the applicability of the provisions of the said condition to the members belonging to SC/ST communities. The applicant volunteered for selection. The candidature of the applicant

was rejected on the ground that he had put in less than three years of service. At that time the applicant approached this Tribunal by filing OA.428/95. During the pendency the selection process was completed and a provisional panel consisting of only 4 (3UR and 1SC) was issued by proceedings dated 8-11-1994 against 12 posts actually notified. The applicant submits that his candidature was rejected without adhering to the para 189 of the IREM.

4. Further during pendency of the OA.428/95 the respondent No.3 issued another notification dated 25-1-1996 to fill up 28 (25 UR, 20C & 1:ST) posts of Assistant Catering Manager.

5. The Third respondent failed to specify the applicability of 3 years of service condition to the members of the SC/ST community in the said notification and again illegally rejected the candidature of the applicant on the ground that he had not put in minimum of three years of service.

6. Against this the applicant approached this Tribunal by filing OA.475/96. An interim order was passed on 18-4-96 directing the respondents to allow the applicant to appear for the written test and not to announce the results of the applicant until further orders. Accordingly the applicant appeared for the written test on 21-4-96. A provisional panel consisting of 9 (6 UR, 2 SC & 1 ST) was issued against actual number of 28 posts notified.

7. When the OA.475/96 came up for hearing then the respondents filed the reply stating that action on their part was erroneous and the applicant was appearing for another selection being held in pursuance of the notification dated 14-8-1997 to fill up 11 posts of Assistant Catering Managers (9 UR, 1 SC & 1 ST) and that he would be considered for the said post with consequential benefits.

8. The two applications filed by the applicant viz. OA.428/95 and 475/96 were disposed of on 27-2-98.

9. The applicant submits that cadre strength of Asstt. Catering Managers is 28 with effect from 1-3-93 and as per the prescribed reservation 2 posts have to be allotted to the members belonging to SC<sup>T</sup> Community. As only one ST candidate had already been promoted to the post of Catering Manager and thereby one post has to be filled up by a candidate belonging to ST community from 1-3-93. The applicant submits that the respondents have not declared his results of the written examination. He suspects bona-fides on the part of the respondents.

9. Hence, he has filed this application for a direction to the respondents to produce all the records relating to the selection held for the post of Assistant Catering Managers in 1994 onwards, verify the number of marks secured by the applicant in each selection and direct the respondents to consider and appoint him as Assistant Catering Manager with all consequential benefits including seniority, arrears from the date of panel that was formed pursuant to the selection held in the year 1994.

10. The respondents have filed the reply. In the reply they submit that the applicant had offered his candidature for the post of Asstt. Catering Manager in response to the notification dated 29-12-1993. His candidature was rejected on the ground that he had not put in minimum service of three years in the feeder cadre which was the basic condition to be satisfied by a Group-D employee. During the pendency of the OA.428/95 the selection was finalised and four persons were empanelled. In that selection one vacancy was reserved for ST and the following candidates viz. 1. Babu Rao Naik,

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2. B. Rama Rao and 3. D.V. Chandrasekhar, the applicant appeared for selection. Babu Rao Naik did not qualify in the written test, Rama Rao did not appear for the written test. The applicant was not considered for appearing for the written test. Thus the vacancy reserved for the ST community could not be filled up but was carried forward for future selection. The applicant had failed in the selections subsequently held during the years 1996, 1997, and 1999 and has no legitimate right of claiming promotion as the Assistant Catering Manager.

11. The rejection of the candidature of the applicant in both the selections was not intentional but it was purely an administrative error. The rejection of the applicant's candidature on the ground of not completing three years of qualifying service in the feeder category as required under the rules was not only for the applicant but also to many other candidates working in the different departments on SC Railway establishment. The procedure of applying three years service condition was not only followed in the Commercial department but in the other departments also.

12. During the years 1996 a decision was taken to exempt the members belonging to SC/ST communities from the condition of three years of qualifying service in the feeder category in light of para-189 of the IREM. Accordingly, when the applications filed by the applicant came u-p for hearing they submitted that the candidature of the applicant would be considered in the ensuing selection being held in response to the notification dated 14-8-1997 and his case for promotion to the post of Assistant Catering Manager would be considered with reference to selection held in the year 1994 if he was found suitable and eligible. Thus both the applications were decided on 27-2-1998.



..9.

13. As a part of selection initiated on 14-8-1997 the written test was held on 8-11-1997. The applicant had appeared for the written test but did not secure the requisite number of marks in the written test and hence he was not called for the viva-voce examination.

14. The applicant could not secure even the minimum gradings in the written test to call him for viva-voce either on relaxed standard or best amongst the failed candidates for the purpose of inservice training scheme available to members of SC/ST community.

15. After receipt of the order dated 27-2-1998, the matter was placed before the General Manager and as observed by the Personnel Officer, the matter was referred to the Railway Board for clarification. They submit that out of 32 candidates who had volunteered for the post in response to notification dated 14-8-97 none had qualified for viva-voce. The Railway Board in their letter dated 26-5-98 advised the Railways to fill the vacancy of the Assistant Catering Manager that arose against the Direct Recruitment on 31-12-1997 by promotion on the basis of selection procedure as one time dispensation.

16. As per the instructions of the Railway Board 25 posts were assessed. Accordingly, notification dated 29-10-1998 was issued inviting applications from eligible volunteers. The applicant had also volunteered for the said post and written test was held on 30-1-1999. In the written test the applicant has not qualified. Out of four SC candidates called for the viva-voce B. Jeevarathnam was found suitable for inservice training, being the best amongst the failed candidates.

17. They admit that para 189 of the IREM provides for relaxation of three year service condition to the members belonging to reserved communities.

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18. They state that there is an element of direct recruitment to the extent of 66 2/3% of vacancies. However, there was bar on direct recruitment till recently. The Railway Board in their letter dated 26-5-1998 have advised to fill up the vacancies of the Assistant Catering Manager falling vacant upto 31-12-1997 by promotion as per selection procedure.

19. Accordingly a notification dated 21-10-98 has been issued to fill up 25 posts (9 Deptl. quota + 16 DR quota) (19 UR+4 SC + 2 ST).

20. They have narrated the circumstances which made them to reduce the number of posts from 25 to 3.

21. Thus they submit that the applicant has not qualified for the post of Assistant Catering Manager even under the relaxed standard.

22. Thus, they pray for dismissal of the OA.

23. In the first instance when the respondents attempted to fill up the post of Assistant Catering Manager during the year 1993 they erroneously rejected the candidature of the applicant on the ground that he did not complete 3 years of service. This aspect has been admitted in their replies filed in OA.428/95 and 476/96. Further they made a submission that the case of the applicant would be considered in response to notification issued on 14-8-1997. The respondents submit that the applicant had failed in the said written test also. Subsequently they have issued notification dated 21-10-98 and even in that written test also the applicant had not qualified, as per the inservice training scheme and the principle of best amongst the failed the respondents have considered the case of the applicant for that post of Assistant Catering Manager.

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24. When the vacancy was notified as 25 there was no reason for the respondents to reduce the number without any reasons. When we asked to show us the reasons as to how the number of vacancies was reduced to 3 the respondents submit that 9 vacancies which were meant for direct recruitment <sup>were</sup> taken and that only 3 candidates had <sup>~</sup> qualified, hence they reduced to 3.

25. The above explanation is grossly incorrect. Even presuming 9 Direct recruits were taken out from 25 they should have atleast filled to the extent of 16 vacancies notified that also they have not done. Hence, we feel reduction of posts from 25 to 3 is arbitrary and their explanation is not convincing. If there are 16 vacancies there has to be ST roster points. If that be the case, we see no reasons for rejecting the candidature of the applicant who belongs to ST community. As the post of Assistant Catering Manager is non-safety one he has to be examined on the basis of the relaxed recruitment standards. That they have not done.

~~26. In view of the following directions :~~

26. In view of the irregularities galore we feel that justice has not been done to the applicant in following ST reservation.

27. Hence, we issue the following directions :

a) The respondents are directed that the applicant and the other candidates belonging to ST community who had applied in response to the notification dated 29-10-1998 of 25 posts shall be called for selection once again by the Review Selection Committee and to the extent of reservation fixed in the notification for the ST community who qualified in accordance with the roster.

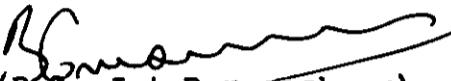
b) If the applicant is selected and posted as the Asstt. Catering Manager then he shall get seniority on par with his juniors who were promoted from 1994 onwards.

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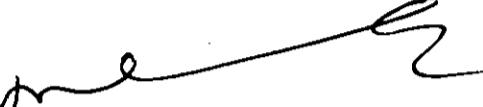
c) However, the applicant is entitled for fixation of pay in the cadre of Asstt. Catering Manager only from the date he is posted as such. However, his seniority shall be notionally determined as above.

28. The OA is ordered accordingly.

29. No costs.

  
(B.S. Jai Parameshwar)  
Member (Judg)

26. 9.20

  
(R. Rangarajan)  
Member (Admn)

Dated : 26 Sept. 2000  
Dictated in Open Court

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