

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

O.A.No.462/2003

Decided on : March 28, 2005.

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.A.K.BHANDARI, MEMBER (ADM.).**

Kalu Ram S/o Late Shri Madanlal ji Agarwal, Aged about 59 years,
Working as Personal Assistant Grade II with the Chief Medical
Superintendent, Railway Hospital, N.W. Railway, Ajmer, R/o 1 Ch. 2,
Dholabhata Housing Board Colony, Ajmer (Rajasthan).

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Applicant

By : Mr.H.S.Chaudhary, Advocate.

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, Ajmer Division, North Western Railway, Ajmer.
3. Senior Divisional Personnel Officer, Ajmer Division, North Western Railway, Ajmer.

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Respondents

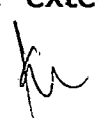
By : Mr. R.G.Gupta, Advocate.

ORDER (ORAL)

KULDIP SINGH, VC

The applicant is aggrieved by an order dated 10.9.2003 (Annexure A-2) vide which the North Western Railway, Ajmer Division, had initiated action to fill up 3 vacancies of Personnel Assistant / Confidential Assistant, which is a selection post, in the pay scale of Rs.6500-10500.

The grievance of the applicant is that these posts were earlier being filled on the basis of viva voce test and by scrutiny of service record. However, the Railway Board has taken a decision vide orders dated 7.8.2003 (Annexure A-4), to change this criteria. In letter, annexure A-4, it has been provided that in terms of the extent



procedure, selection posts are filled by a positive act of selection consisting of a written test and / or viva voce; viva voce being a must in every case. It was also decided that the written test will invariably form part of all selections held for promotion to posts classified as selection including the posts for which presently only viva voce form part of the selection. Meaning thereby the Railway Board had modified the selection for appointment to be made for selection post and written test has been made a must as part of the selection procedure.

The applicant alleges that these instructions were issued on 7.8.2003 and the applicant was already working on the post of Personnel Assistant Grade II in the pay scale of Rs.6500-10500 on adhoc basis and the two vacancies which are proposed to be filled up through the present selection notified by the impugned order dated 10.9.2003 (Annexure A-2) existing prior to the modification of the selection procedure for promotion against these posts. The vacancies relate to the period 1st December, 2001 and 8th May, 2003 so these two vacancies were required to be filled up as per the procedure existing prior to the modified one. The instructions issued by the Annexure A-4 cannot have retrospective effect and these can be applied only in respect of the selections to be held to fill in the vacancies which may occur after 7.8.2003, when Annexure A-4 was issued. Thus, the applicant has prayed for quashing of the impugned order and particularly para 4 of the Railway Board Circular whereby revised procedure has been given effect to retrospectively and it be declared that the same applies to the vacancies that may fall after issue of this letter. He has prayed to declare retrospective operation of the modified procedure as arbitrary, unreasonable and inappropriately and as such is violative of articles 14 and 16 of the Constitution of India and be struck down. It is prayed that a direction be issued to the respondents to fill up the two posts of Confidential



Assistants/ Personnel Assistants Grade II in the scale of Rs.6500-1050 (RP) which were lying vacant from 1.12.2001 and 8.5.2003, on the basis of the provisions contained in the pre-existing Recruitment Rules which provide to fill up these posts on the basis of viva voce test and scrutiny of service record alone.

The respondents are contesting the Original application. They admit that the post of Confidential Assistants/Personnel Assistants in the pay scale of Rs.6500-10500 is a selection post and prior to Annexure A-4 dated 7.8.2003, the same were being filled up on the basis of viva voce test and by scrutiny of service record but after 7.8.2003, the procedure for selection has been modified and written test for the posts classified as selection posts, has been made.

It is also not disputed that the two vacancies relating to the posts of Confidential Assistant/Personnel Assistant-II, were lying vacant w.e.f. 1.12.2001 and 8.5.2003 but the same have been notified for being filled up after the instructions have been issued by Annexure A-4, by the Railway Board on 7.8.2003. Department is following the instructions as issued by the Railway Board which is treated as recruitment rules. The same cannot be quashed and set aside.

We have heard learned counsel for the parties and gone through the record.

The facts are not disputed that out of the three vacancies, one pertained to the period 1st December, 2001 and the second vacancy pertained to the period 8.5.2003 and the 3rd vacancy^{for} anticipated vacancy which was likely to occur after the impugned notification has been issued. Since the instructions containing modified selection procedure have been issued on 7.8.2003, it is clear that all the ~~three~~^{two} vacancies notified were pertaining to the period earlier to the introduction of modified selection procedure vide Annexure A-4.

Now the question arises for our consideration is as to what

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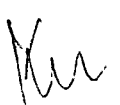
recruitment rules are to be made applicable for filling up all these vacancies. The learned counsel for the applicant has referred to a judgment of the Hon'ble Supreme Court in the case of Y.V.Rangaiah & Others Vs. J. Srinivasa Rao & Others, 1983 (3) SCC, 284 wherein it was held that posts which fell vacant prior to the amendment of the Rules would be governed by the original rules and not by the amended rules. As a necessary corollary, the vacancies that arise subsequent to the amendment of the rules are required to be filled up in accordance with the law existing as on the date when the vacancies arose. Even a carried forward vacancy is required to be considered in accordance with the law existing unless suitably relaxation is made by the government. The view taken by the Hon'ble Supreme Court in the case of Y.V. Rangaiah (supra) has been followed in a series of decisions by Apex Court, High Courts and Tribunals also and one of such case is of State of Rajasthan Vs. R. Dayal, 1997(6) SCC (L&S), Page 1631, wherein again the Hon'ble Supreme Court has followed the law as laid down in the case of Y.V. Rangaiah (supra). The law as laid down in the case of Y.V. Rangaiah has been consistently followed and it admits no exception. Learned counsel for the applicant states that in view of this legal position, para 4 of Annexure A-4 which mentions that "the procedure as revised above will be applicable to selections notified on or after the date of issue of this letter" is per se illegal and has to be quashed.

Learned counsel for the respondents has submitted that the year wise consideration of vacancies does not apply to the Railways particularly for Group-C posts and the vacancies ^{can be in} clubbed together and then selection can be made as per the latest instructions issued by the Railway Board and in support of his contention learned counsel for the respondents has referred to a judgment reported as 1999(2) All India Services Law Journal, Page 778, titled N.G.L. Goswami & Others Vs.

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General Manager, Western Railway & Others, wherein the Principal Bench of C.A.T has held that the requirement of year-wise panels on the basis of year wise vacancies does not at all seem to have been made applicable in the case of selection for Group-C posts in the Railways and there is no specific rule or provision in the Indian Railway Establishment Manual which can be shown to have been not complied with by the respondents in the present case. The applicants grievance that in not conducting the year wise selection they have lost their chance was also considered and rejected. The manual provision does not indicate any limit in the number of chances to be availed off by the eligible candidates.

We have considered the contentions raised by learned counsel for the respondents at length. We find that the facts in the case cited by the respondents are altogether different. The question raised in that case was as to whether the unfilled vacancies can be clubbed and filled up in one go or the selection has to be conducted year wise. The applicants in that case had pleaded that if the selection is conducted year wise, they have a better chance of getting selected as the zone of consideration gets squeezed and they get more no. of chances whereas if vacancies are clubbed together and one selection is conducted, they get less chances of selection. The Tribunal after considering the para 294(c)(v) and 295 of the IREM, recorded that there is no provision for holding year wise selection and thus there was no question of violation of any rules if the vacancies were clubbed as the rules were silent on this aspect. This judgment is in no way concerned with the controversy raised in this case. . The issue in this case is as to what procedure is to be adopted for filling up the unfilled vacancies, after the selection criteria has undergone a change. This issue stands settled in the case of Y.V.Rangaiah that vacancies which arose prior to the coming into force of amended rules, have to be filled



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up as per unamended rules. Admittedly out of three notified vacancies two vacancies pertained to the period prior to the modified recruitment rules so for these two vacancies amended recruitment rules could not be applied as per the law laid down in in the Y.V.Rangaiah's case and followed by various courts in series of judgments. The controversy in the case cited by the learned counsel for the respondents is not on the issue as to which amended rules are to be made for holding selection in the matter of vacancies. Since a consistent view has been taken by various judgments, following the Rangaiah's case, the recruitment rules are applicable to fill the vacancies are those which existed at the time when vacancies had arisen and in the case of R. Dayal (supra), the Supreme Court has held that even the vacancies which are carried forward should also be filled up by the rules available at the time when these became available. The law as applicable would be that these vacancies would be filled up by those recruitment rules which existed as on the date of vacancies and not the amended recruitment rules. So, following the law laid down by the Apex Court in the case of Rangaiah, we also hold that in this case, the vacancies which had arisen prior to the issuance of modified selection procedure, were to be filled up as per the pre-amended criteria by conducting viva voce and scrutiny of service record.

The next question arises for our consideration is as to whether in this situation can any relief be granted to the applicant who has already retired by superannuation. Admittedly, the applicant is claiming promotion to the post which is a selection post and as per the relevant recruitment rules, the procedure to fill up the vacancies was viva voce test and scrutiny of the service record of a candidate. Now since the applicant has retired, he cannot be subjected to viva voce test even if we quash the selection made by the respondents by way of the modified selection procedure, because the post is selection

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one and positive act of selection has to be undergone before giving promotion to the applicant. The department had not notified the vacancies and for various administrative reasons, so the Court could not even compel the department to notify the vacancies when the applicant was in service so in a way the O.A itself has become infructuous and no relief can be granted to him.

In view of this, the O.A. Stands dismissed, leaving the parties to bear their own costs.


(A.K.BHANDARI)
MEMBER (ADM.)


(KULDIP SINGH)
VICE CHAIRMAN

March 28, 2005.

HC*