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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Sep-14-2009

Judge : Honourable Dr. K.B.S. Rajan, Judicial Member & Honourable Mr. K. George Joseph, Administrative Member

Appeal No. : O.A. NO. 629 OF 2008

Appellant : T. Johnson

Respondent : Union of India Represented by the Secretary to the Government of India, Ministry of Railways (Railwa

Advocate for Pet/Ap. : For the Applicant: Mr. T.C. Govindaswamy, Advocate. For the Respondents: Mr. Thomas Mathew Nellimoottil, Advocate.

Judgement :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Promotion to the post of Asst. Personnel Officer in the Railways is the main issue in this case.

2. The applicant is at present working as Welfare Inspector Gr. I in the erst while pay scale of Rf 6500 -10500. His next promotional post is Asst. Personnel Officer. Vide Annexure A-1, respondents had notified as many as 6 UR vacancies, 1 SC and 1 ST vacancies in the post of Asst. Personnel Officer and the applicant was one of the aspirants under the UR quota and had qualified in the written examination and was advised to be in readiness to appear for viva voce vide Annexure A-3 communication dated 30-08-2006. The applicant attended the interview. Panel of selected officers had been published vide Annexure A-4 order dated 06-03-2007 in which the last UR candidate was one Shri M. Srinivasalu, who is just above the applicant in the seniority. Promotions were accordingly effected vide Annexure A-5. One Shri P. Rajeswaran, an SC candidate was also promoted against one of the UR quotas. In addition, one Shri M. Subramanian another SC candidate was promoted under the SC quota. The aforesaid Rajeswaran and another one Shri Manicka Raj filed O.As before the Madras Bench of the Tribunal seeking their promotion in the earlier panel of 2001 published on 09-04-2001. The ground was that two of the SC candidates who were empanelled under the reserved quota were found to be eligible to be accommodated against the UR quota on merit. Thus, the claim of the said Rajeswaran and Manicka Raj was allowed, by shifting the promoted SC candidates from reserved slot to UR slot and placing Rajeswaran and Manicka Raj against the SC quota of the panel dated 09-04-2001. Accordingly, Annexure A-8 order came to be issued. The logical consequence of two SC candidate being accommodated against two UR quota is that two junior most among the UR candidates had to be reverted. Thus, the axe fell on two general candidates S. Rajamani and D.W. Samuel who were sought to be reverted. The reverted individuals moved the High Court, by filing CWP No. 30110 and 30111/2003 which had however been dismissed. However, the Railway Board of its own accord, retained the said two officers by enlarging the panel of 09-04-2001 from 13 to 15. Accordingly, by Annexure A-11 order was issued. There was, however, no indication that the said accommodation of Rajamani and Samuel were against any future vacancies. In view of the fact that Shri Rajeswaran who was occupying one of the UR vacancies had been shifted from the 06.03.2007 panel to 10-04-2001 panel, one UR vacancy being available, and the applicant being the senior most of

the qualified inspectors, the applicant had filed Annexure A-9 representation dated 21st June 2007 followed by 16.08.2007 representation vide Annexure A-10 requesting the authorities to promote him against the vacancy arisen out of shifting of the name of Rajeswaran from the latest panel to the earlier panel of 10-04-2001. This was however rejected by the Zonal office, vide order dated 17-10-2007 at Annexure A13, stating that there is no provision in the Rules to order such a promotion. The Railway Board in their communication dated 1909-2008 vide Annexure A-14 stated that if the two individuals (S/Shri Rajamani and Samual) had not been included in the earlier panel, they would have occupied the position in the present panel and thus, movement of Shri Rajeswaran from the panel dated 6th March, 2007 to 10th April, 2001, has not actually resulted in the panel dated 6th March, 2007 being short. The applicant has challenged Annexure A-13 and A-14 and prayed for a direction to the respondents to promote him as Asst. Personnel Officer under the UR quota, he being the senior most amongst the qualified Inspectors.

3. Respondents have contested the O.A. Their main contention is that there is no provision in the Rules to accommodate the next senior in the event of any such vacancy in the panel. Again, there is absolutely no vacancy due to accommodation of two individuals under the UR quota. Mere qualifying in the examination or availability of vacancy cannot give any right to the applicant to seek promotion. The OA thus, being devoid of merits should be dismissed.

4. Counsel for the applicant argued as under:

(a) Contention that there is no rule to meet a contingency that once the panel is finalized no inclusion can be made in the place of one of the candidates removed from the panel is incorrect. Accommodation of one Shri Rajamani and another Shri Samuel in the panel in Annexure A-11 could be possible only because of either existence of a Rule or relaxation by the Board of any rule which may not permit such inclusion. The inclusion of the above two persons in the said panel is on account of availability of vacancies during the period 1996-98 as is evident from the Railway Board letter dated 22nd August 2007 vide

Annexure R-1.

(b) In the notification, the number of vacancies announced is six so far as unreserved candidates are concerned and the panel contains only five UR candidates. Hence, it is not correct to hold that there is no vacancy.

(c) Vide Annexure A-14, the Railway Board have contended that in view of the adjustments (made in respect of Rajamani and Samuel), movement of Shri Rajaswaran from Annexure A-4 panel dated 6th March 2007 (2004 panel) to Annexure A-8 panel dated 20th June 2007 (2001 panel) has not actually resulted in the panel dated 6th March 2007 being short. This is thoroughly incorrect, for, the vacancy arising in the year 2004 cannot be advanced to 2001 to accommodate the aforesaid Rajamani or Samuel. Thus, there does exist a vacancy and the applicant being the senior most amongst the qualified UR candidate, he ought to have been accommodated against the said vacancy, as per para 204.9 of the I.R.E.M.

(d) Enlargement of panel is not an uncommon feature. Annexure MA1 and MA2 enclosed to MA 632 of 2009 would go to show that there has been an enlargement of the panel from 24 to 25 in respect of S.E. with the approval of the competent authority.

(e) The accommodation of Rajamani or Samuel by the Railway Board could be as a matter of grace as the said individuals had served as A.P.Os for quite some time by then, and to avoid an embarrassing situation of reverting them to the feeder post of inspector. But the same cannot be at the cost of the applicant's legitimate entitlement to be promoted.

5. Counsel for the respondents argued as under:

(a) There is no provision in the rules to accommodate the applicant against any vacancy notified as clearly stated in Annexure A-14 Railway Board letter.

(b) Qualifying in the written examination and viva-voce will not confer any right to be empanelled. Similarly availability of vacancy alone is not the criteria to include the applicant in the panel in the place of P. Rajeswaran.

(c) Once the panel is finalized, there is no provision in the rules for inclusion of any other individual. Nor is there any provision that whenever a person is removed

from the panel the shortfall has to be made good by including the next junior who has qualified in the selection.

6. Arguments were heard and documents perused. The admitted facts are as under:

(a) As per Annexure A1 notification dated 11th January 2005, there were in all eight vacancies of A.P.O (6 UR, 1 SC and 1 ST). These 8 vacancies were filled up after conducting necessary selection and P. Rajaswaran was the SC candidate who was accommodated against one of the UR vacancies, while the SC point was filled up by another SC candidate. Annexure A-4 refers.

(b) The junior most amongst the UR candidates promoted vide Annexure A-4 panel is one M. Srinivasalu.

(c) After the said Srinivasalu, it is the applicant who is the senior most (vide page 11 of the reply statement)

(d) By virtue of a court order, the said Rajeswaran was to be included in the earlier panel and accordingly, the G.M. approved the inclusion of the name of the said Rajeswaran in the earlier panel approved by the GM on 9th April 2001 (para 12 of the reply read with Annexure R-1).

(e) The applicant qualified in the written as well as Viva-voce (refer to para 4(h) of the application and corresponding paragraph in the reply. (f) Rajamani and Samuel were two UR candidates who were originally promoted as per the earlier panel, but who were indeed to be reverted in pursuance of accommodation of two SC candidates against UR quota on merit and when these two individuals challenged their reversion, the writ petition No. 30110 and 30111 of 2003 filed by the said individuals has also been dismissed by judgment dated 27th March 2007 of the High Court of Madras.

(g) The aforesaid two individuals, have, however, been adjusted by enlargement of the panel for the said earlier year of 2001, vide Annexure A-11.

7. From the admitted position, it is clear that there is no specific indication that accommodation of Rajamani and Samual, vide Annexure A-11 order on the strength of the Railway Board's letter dated 20th June 2007 referred to therein, is against any future vacancy. Indeed, such an accommodation against future vacancies is not provided for in the rules. Again, if there be any implied approval by the Railway Board, against one vacancy (created by shifting Shri Rajeswaran from the Annexure A-4 panel to Annexure A-8 panel) two individuals cannot be accommodated. Thus, contention that by accommodating Rajamani and Samual, movement of Shri Rajeswaran from the panel dated 6th March 2007 to the panel dated 10th April 2001 has not actually resulted in the panel dated 6th March 2007 being short, vide Annexure A-14 cannot be accepted. By shifting Rajeswaran to an earlier panel from the Annexure A-4 panel, there does remain a vacancy under the UR quota.

8. The question then is whether the same could be filled up by inclusion of the name of the applicant who is admittedly the senior most amongst the qualified UR candidates. Respondents contend that there is no provision to modify the panel once finalized. However, a clear instruction is given in Annexure A-7 by the Railway Board for 'suitably modifying the APO's panel following due procedure.' This clearly confirms that there is some prescribed procedure for modifying the panel, which has to be followed, whenever there is a need to modify the panel. Again, IREM 204 (9) provides for preparation of the panel from out of the number of qualified candidates to the extent of the number of vacancies. The said para reads as under:

"204.9. The panel should consist of employees who had qualified in the selection, corresponding to the number of vacancies for which the selection was held. Employees securing the gradation 'Outstanding' will be placed on top followed by those securing the gradation, 'good' interest seniority within each group being maintained."

9. Thus, provision exists for modification of the panel. In the instant case, admittedly, on the shifting of Rajeswaran from the Annexure A-4 panel, there are only 5 UR candidate, the last of them being Shri Srinivasalu and thus, the

remaining one vacancy shall have to be filled up by promoting the next immediate qualified individual, and the same being the applicant, it is the applicant who has to be promoted against the existing vacancy.

10. Thus, the contention of the respondents that there is no rule to modify the panel, or that there is no vacancy to accommodate the applicant cannot be accepted. It is thus evident that the applicant has been omitted to be included in the Annexure A-4 panel despite there being a vacancy and the applicant being the senior most UR qualified candidates.

11. The OA is therefore, allowed. Annexure A-12 and A-14 are hereby quashed and set aside. Respondents are directed to include the name of the applicant in the Annexure A-4 panel at the appropriate place and afford promotion to the applicant from the date his junior has been promoted. The promotion so made shall, however, be only notional actual being from the date the applicant enshoulders higher responsibility. This order shall be complied with, within a period of three months from the date of receipt of a copy of this order.

12. Under the circumstances, there shall be no orders as to cost.

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