

PETITIONER:
G. VENKATESHWARA RAO

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 28/10/1999

BENCH:
S.P.Kurdukar, R.P.Sethi

JUDGMENT:

This Civil Appeal by Special Leave is filed by the Appellant who was the applicant before the Central Administrative Tribunal, Hyderabad in Original Application No. 263 of 1994. The Central Administrative Tribunal (for short CAT) by its judgment and order dated March 17, 1997 dismissed the original application filed by the Appellant holding that the same is devoid of any merits. It is this order which is the subject matter of challenge in this appeal.

2. The dispute in this appeal relates to filling up of the vacancy of Office Superintendent Grade II in the Guntupalli Workshop (Andhra Pradesh) Railways. The notification dated 28.11.1990 was issued for filling up the said vacancy. The roster points to be filled were 13 to 18. It is common ground that 14th point in the roster was reserved for SC and 17th point for ST. After following the procedure for selection, a provisional list of empanelled candidates for the said posts was prepared and issued vide notification dated 18.11.1991. The Appellant was at Sl. No.6. Vacancy at roster point No. 14 was filled in by the SC candidate who was found suitable. But however, the vacancy for ST at roster point No. 17 could not be filled, as the said candidate was not available. It is the claim of the Appellant that since the vacancy earmarked for the ST candidate remained vacant and he being the next in the empanelled list, the vacancy should have been filled in by appointing him. This claim was made on the footing that the concerned authority at Guntupalli Workshop had recommended to the Railway Board that for want of ST candidate the said vacancy be dereserved for general category. This recommendation was although made sometime in 1991 but it remained pending till 1993 with the Railway Board for its approval. In the mean time, restructuring of the cadre took place vide Office Order No. 32 of 1993 issued on 1.3.1993 promoting respondent No. 4 in that vacancy. The Appellant submitted the representation to the higher authorities complaining that respondent No. 4 should not have been appointed and in his place, his claim should have been considered. The representation of the Appellant however, came to be rejected in view of the restructuring of the cadre. Being aggrieved by the rejection of his representation, the Appellant had filed the aforesaid OA before the CAT at Hyderabad.

3. It is common ground that by virtue of restructuring of the cadre, the Appellant could not have

been appointed as claimed by him. Two contentions were raised before CAT, Hyderabad :

i) That because of delay on the part of the Railway Board to dereserve the vacancy earmarked for ST till 1993, he had lost the opportunity to be appointed against the said vacancy. If the Railway Board were to dispose of the recommendation earlier dereserving the said vacancy for general category, the Appellant, being the next in the empanelled list, would have been appointed.

ii) The post of Office Superintendent Grade II is controlled by Workshop whereas the post of Office Superintendent Grade I is controlled by the Zonal Railway Level. The Workshop Unit would not be in a position to assess the vacancies of Office Superintendent Grade I and for that purpose, Zonal Railway Level ought to have assessed the vacancies of Office Superintendent Grade I at the time when the notification dated 28.11.90 was issued for filling vacancies of Office Superintendent Grade II. Having not done so, a great injustice has been done to him by not appointing him in the vacancy although he was empanelled at S.No. 6.

Both these contentions were negated by the CAT, Hyderabad in its order which is impugned in this Appeal.

4. Mr. L.N. Rao, the Learned Advocate appearing in support of this Appeal reiterated the same contentions and urged that the view taken by the CAT, Hyderabad is erroneous and cannot be sustained. While dealing with the first contention, he urged that if the Railway Board were to take the decision expeditiously, the Appellant could have been accommodated on such dereserved vacancy. He urged that there was no impediment in taking the decision of dereservation and it was merely an inaction on the part of the Railway Board which had deprived the Appellant being appointed against the vacancy. We do not see any substance in this contention because nothing has been pointed out to us from the record which would justify this contention. The Learned Counsel for the Appellant drew our attention to the decision of this Court in Y.V. Rangaiah Vs. J. Sreenivasa Rao & Ors. (1983) 3 SCC 284 and in particular, he relied upon paragraphs 4 and 9. We have gone through the Judgment and in our opinion, the ratio thereof has no application. It was a case dealing with delay in preparing panel for promotional cadre under the then existing Rules which were substituted by new Rules. The panel was prepared under the new Rules.

5. Coming to the second contention as regards restructuring of the cadre, it is quite clear that the restructuring appears to have been made for the efficient working in the Workshop Unit. We, therefore, do not see any substance in this contention.

6. There is no substance in this Appeal. Appeal is accordingly dismissed but however, parties are directed to bear their own costs.