
(1996) 06 AP CK 0048
In the Andhra Pradesh High Court
Case No : W.A. No. 434 of 1994

The Superintending Engineer, Operation Circle, APSE Board, Warangal and Others APPELLANT

Vs

D. Kondala Rao and Others RESPONDENT

Date of Decision : 18-06-1996

Acts Referred:

Citation : (1996) 3 ALT 546 : (1997) 2 LLJ 586

Hon'ble Judges : Y. Bhaskar Rao, J;G. Bikshapathi, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, for the Appellant; P. Srinivasa Reddy and B. Adinarayana Rao, for the Respondent

Judgement

G. Bikshapathy, J.—The Writ Appeal is directed against the orders of the learned single Judge in W.P. No. 7922/1993 dated February 23, 1994.

2. The Electricity Board is the Appellant in the Writ Appeal and the Respondent in the Writ Petition. The matter relates to the promotion of the 1st Respondent to the post of Junior Accounts Officer in pursuance of the panel prepared by the Departmental Promotion Committee, dated February 22, 1993.

3. The case of the Respondent-employee was that he was entitled for promotion, but he 51 was working as U.D. in the Board service and that he was qualified and he was eligible for promotion to the post of Junior Accounts Officer by promotion. There were 9 vacancies available in the cadre of Junior Accounts Officer in Warangal Zone. Accordingly, the Departmental Selection Committee was constituted to consider the eligible candidates, and the names of 12 employees including the petitioner were approved ,0 for promotions and accordingly, a panel was prepared. The petitioner figures at SI. No. 7 in the panel. Since he was not promoted to the post in spite of the clearance by the Departmental Promotion Committee, the petitioner having made representations approached this Court for necessary relief. The learned Single Judge of 58"1 this Court allowed the Writ Petition and directed the Board to hold the deemed Departmental Promotion

Committee as on February 22, 1993 in respect of the additional post and consider only 6 candidates, who were qualified on that day. If the petitioner is found fit his case may be considered for the said post. Aggrieved by the said order, the Board has filed the present Writ Appeal.

It is the contention of the learned counsel for the Appellant-Board that there were only 9 vacancies in the cadre of Junior Accounts Officer. Out of the said 9 vacancies, 2 were reserved for direct recruitment and one post of J.A.O/M.R.T. and therefore there are only 6 vacancies available to be filled up and the Departmental Promotion Committee has prepared a panel of 6 candidates. But,, however, under mistaken impression they prepared a panel of 12 2(Candidates. It is the case of the Board that under Regulation 8, the panel has to be prepared by the Departmental Promotion Committee to the extent of vacancies available and therefore even if such a panel is prepared it is in contravention of Regulation 8(1)(b) of A.P.S.E.B. Service Regulations. Only 6 candidates could be promoted and in fact the promotion was issued in respect of the first six candidates figuring in the panel. The 7th vacancy cannot be filled-up as the post was suppressed on account of M. R. T. norms. Therefore, the 1st respondent cannot claim the said 7th post. It is seen from the order of the learned single Judge in respect of M. R.T. norms no finality was given as the discussions with the Board and union are in progress. Therefore, Minutes dated March 16, 1993 were directed, wherein it was emphasised that the M.R.T. norms will be expedited after discussions with the union. The learned counsel for the 1st Respondent employee submits that the M.R.T. norms are kept in abeyance and therefore the vacancy cannot be kept unfilled, treating that the M.R.T. norms have been implemented on account of which one post became surplus. It is necessary to extract the relevant para of the discussions, which is as follows :

"M.R.T. norms :

The issue of M.R.T. norms which were pending before the Board should be expedited after the Committee discusses with the union and submits its fresh report. The Field Officers are requested not to make any changes in the existing norms pattern until the issue is resolved at Board level".

It is also found that the Board by another Memo dated September 14, 1993 kept the proceedings in BP No. 557, dated December 7, 1992 till the norms are finalised. Therefore, it is clear that as on the date of the consideration, the preparation of the panel by Departmental [S Promotion Committee, the agreement between the management and the union were in force and the same are binding on the Board. The learned counsel for the 1st Respondent further submits that the Board has been showing 9 vacancies in to the post of Junior Accounts Officers. Therefore, it is not open for them to resile from the said position in the guise of the alleged suppression of one vacancy. That there were 9 vacancies in the cadre of Junior Accounts Officers ?,5 and as on March 1, 1993 the position remains the same. However, the vacancy position as on April 1, 1993 was shown that three posts of Junior Accounts Officers were vacant including

direct recruitment. From this, the learned 30 counsel for the 1st respondent employee submits that deleting two direct recruitment vacancies, still 1 more post is vacant and therefore the 7th vacancy has to be necessarily filled-up by promoting the 1st respondent which was already cleared by the Departmental Promotion Committee.

4. We have considered the matter at length and find that the finding of the learned single Judge cannot be said to be illegal, when the Board itself kept the M. R. T. norms in abeyance until the final decision is taken and keeping in view the terms of the agreement, it is not open for the Board to withhold one vacancy. Hence, the contention of the Appellant-Board that there were only 6 vacancies apart from 2 direct recruitment posts cannot be accepted. It is clearly established that there were 7 posts excluding two direct recruitment posts. It is, also contended by the learned counsel for the Appellant-Board that merely placing an employee in the panel would not confer any right of promotion and therefore no writ shall be issued for directing the Board to promote the 1st Respondent for the post of Junior Accounts Officer. Though the contention of the learned counsel appears to be attractive in the first blush, a deeper study would reveal that the contention has no basis and it is not the case of the Board that there were no vacancies as on the date of the preparation of the panel. Admittedly, there were 1 vacancies and non-filling of the 7th vacancy in the guise of the suppression of the vacancy, is not valid and in such circumstances, the principle that the 1st respondent has no right for promotion, merely because he has been placed in the panel was not applicable.

5. It is also further contended by the learned counsel for the Appellant-Board that in fact there were only 6 vacancies and the Departmental Promotion Committee was under wrong impression that the panel has to be prepared twice the number of available vacancies. We are not accepting this contention also. Merely because the Departmental Promotion Committee has prepared the panel of 12 candidates, it cannot be presumed that there were only 6 vacancies, but the actual scenario reveals that out of 9 vacancies 2 were reserved for direct recruitment and seven posts have to be filled on the basis of the 3 panel prepared by the Departmental Promotion Committee. Therefore, even if the panel of 12 names is prepared, the promotion could be confined only to the actual vacancies available. In that perspective (of the matter) the 1st respondent-employee being the 7th member in the panel, is entitled to be promoted in the post. It cannot be disputed that Respondent No. 1 was declared fit by the Departmental Promotion Committee and he was put on panel at SI. No. 7, as on February 22, 1993 when the Departmental Promotion Committee met and finalised the panel. Therefore, the question of again considering the 1st respondent for promotion would not arise. Though the learned Single Judge directed to hold the deemed Departmental Promotion Committee on February 22, 1993 and consider only 6 candidates and the 1st respondent may be promoted if he is found fit, inasmuch as the 1st respondent was already selected by the Departmental Promotion Committee and placed at SI. No. 7, the fresh

exercise is not warranted as far as the filling-up, of 7th vacancy is concerned which was existing as on February 22, 1993. Therefore, we make it clear that the 1 st respondent is entitled for promotion without undergoing selection process by the Departmental Promotion Committee once again.

6. Thus, we find no merits in the contentions raised on behalf of the Appellant Board. Accordingly, the Writ Appeal is dismissed. There shall be no order as to costs.