

N. Ramjayaram

Vs

General Manager, South Central Railway and others

Civil Appeal No 5085 of 1996

(K. Ramaswamy, G. T. Nanavati JJ)

15.03.1996

JUDGMENT

1. Leave granted.

2. Though notice has been sent to the respondent Nos. 1. to 5, it has been served only on respondent Nos. 1 to 4. In respect of 5th respondent, neither A. D. card nor unserved letter has been received back. In the circumstances, notice must be deemed to have been served on the 5th respondent. They are not appearing either in person or through counsel.

3. The only controversy in this case is : whether the contesting respondents are entitled to be given preferential 15 marks over the appellant in selection as Law Assistants. It is an admitted position that in the written examination held by the respondents 1 and 2, the appellant had secured more than 60% in written examination and in viva-voce he had fared well. In view of the fact that the contesting respondents have been assigned 15 marks for their seniority, he could not get selected. The appellant has challenged awarding of 15 marks as discriminatory and violative of Article 14 of the Constitution. This Court has issued notice on August 28, 1995, to the following effect :

"It would appear that Rule 219 (g) of the Railway Establishment Code provides procedure for selection on the basis of over all merit. The Tribunal in this case proceeded on the basis of awarding marks to find the suitability of the candidates for selection, awarded 50 per cent of marks to professional ability; personality, academic qualifications, leadership quality-20 marks; record of service-15 marks; seniority-15 marks. The grievances of the petitioner, though he is having requisite five years service other persons, having higher scale of pay is preferred. He cannot be discriminated on the basis of having higher scale of pay and seniority cannot be adjudged on that basis. It is contended by Mr. C. Sitaramiah, the learned senior counsel for the petitioner that the seniority has to be adjudged with reference to the length of service but not on the basis of scale of pay being drawn and the person drawing higher scale of pay cannot be put above the candidates who are drawing lesser scale of pay by reason of the fact that the persons now made in the list have been drawn from different sources. .... disability and discrimination to some of the departments. The test laid down is arbitrary and unconstitutional. To consider this question, notice is issued."

4. The respondents Nos. 1 and 2 have filed counter-affidavit. It is admitted therein that the appellant had secured higher marks in the written and viva-voce. It is stated that in view of Rule 320 of the Railway Establishment Code, the respondents are seniors to the appellant. While the appellant is

drawing scale of pay of Rs. 1200-2040/- respondents are drawing scale of pay of Rs. 1400-2660/- and thereby they became seniors. On that premise they were given 15 marks over the appellant. As a consequence, they came to be selected.

5. Rule 320 of the Railway Establishment Code reads as under:-

"Relative Seniority of Employees in an Intermediate Grade Belonging to Different Seniority Units Appearing For a Selection/Non-Selection Post In Higher Grade.

When a post (Selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-se seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose."

A reading of that rule would indicate that in assigning inter-se seniority irrespective of the date of confirmation of an employee the continuous length of service in the higher scale of pay was given preference to the seniority over the persons who are drawing lesser scale of pay in a selection as well as non-selection post to be filled by considering the staff of different seniority units. The said rule has no application to the facts in this case. The selection is required to be done on the basis of the criteria laid down under Rule 219 (g) of the Railway Manual. Selection should be made primarily on the basis of overall merit but for guidance of Selection Board the factors to be taken into account and the relative weightage laid down was as under :-

"219 (g) of the Indian Railways Manual states selection should be made primarily on the basis of overall merit but for guidance of Selection Board the factors to be taken into account and their relative weightage are laid down as below :-

	Maximum Marks	Qualifying Marks
i) Professional ability	50	30
ii) Personality, address Leadership and academic qualification.	20	--
iii) A record of service.	15	--
iv) Seniority.	15	--

In this case since the contesting respondents are not from the same unit but of different units, Rule 320 stands excluded, weightage of 15 marks for seniority given to the respondents obviously is illegal. Therefore, there is force in the contention of the appellant that his non-selection tantamounts to arbitrary exercise of power on the part of the respondents Nos. 1 and 2. We set aside the order of the CAT, Hyderabad made in O. C. No. 1039/92, dated March 21, 1995. The respondents are directed to consider the selection according to rules and make appointment according to law.

6. The appeal is accordingly allowed. No costs. Appeal allowed.