

DATED THIS THE THIRD DAY OF MARCH, 1987.

APPLICATION No. 1031/86.

...

...

Vs.

- ... Advocate for R.1-6)
... Advocate for R. 7.)

RESPONDENTS

This application has come up before the Court today.
Hon'ble Shri L.H.A.Rege, Member(AM) made the following :

O R D E R

In this transferred application, the impugned order dated 15.11.1983, passed by the third respondent, is challenged, with a prayer to quash the same, and to direct the respondents to draw up a final seniority list of drivers in the Railway Container Service, placing the applicant above the seventh respondent and to grant such other relief as deemed appropriate. By I.A.No.II filed by the applicant on 23.1.87, he has sought permission to implead two more respondents numbered Respondents 8 and 9 as necessary parties in the interest of justice.

2. The following are the salient facts to appreciate the various contentions raised in this application. The applicant was appointed by respondent-5 as a Spare Jeep Driver-as a casual labourer-with effect from 19.6.1969 on a daily wage of Rs.5/- in the Southern Railways at Sakleshpur (Annexure-A). On 24.8.1969, he was deputed by R-5 to work under R-6, in the Container Service at Bangalore but from that date till 10.10.1969, his muster was maintained in the office of the Executive Engineer(Construction), Sakleshpur and he was being paid a daily wage of Rs.5/-.

3. On 11.10.1969, the applicant was transferred to the Office of R-6, viz., the Divisional Commercial Inspector, Container Service, Bangalore, where he has been serving ever since. On 17.11.1969, the Divisional Mechanical Engineer, Southern Railways, Mysore (DME for short) appointed the

LL

applicant as a Substitute Driver, with effect from 11.10.1969. The applicant alleges that in doing so, the DME overlooked the fact, that he was appointed as a Substitute Driver earlier from 24.3.1969 in the Container Service, at Bangalore, in the leave vacancy of one Shri K.Vishwanathan, who was serving in the Bangalore-Bombay Container Service. According to him, the DME treated his service from 24.8.1969 to 11.10.1969 on daily-wage basis and denied to him the benefit of the status of a Substitute Driver from 24.8.1969. The applicant represented thereon, to R-6, but to no avail.

4. R-7 is said to have joined service in the Southern Railways, as emergency labourer, from 6.9.1969 to 9.9.1969, i.e., for a period of 3 days only, in the leave vacancy of one Shri V.K.Balakrishna, in the Container Service at Bangalore. He was later appointed as a Substitute Driver, in the Container Service at Bangalore, with effect from 15.9.1969, against one of the 4 posts of regular Drivers, sanctioned for the Bangalore-Bombay Container Service. The applicant states, that he was in continuous employment as Driver in the Container Service at Bangalore, from 24.8.1969, while R-7 had put in only 3 days of service, as emergent labourer from 6.9.1969 to 9.9.1969. The applicant therefore contends, that even though R-7 joined duty in the Container Service, later than he and his service was interrupted, yet he was appointed as a regular Substitute Driver on 15.9.1969 i.e., earlier than the applicant, who was deemed to be so appointed, with effect from 11.10.1969, which has affected his seniority. The applicant refers to the Provisional Seniority List (PSL) of Drivers in the Container Service at Bangalore in the Grade of Rs.260-400 as on 30.9.1982 (Annexure-C), as published by the Divisional Personnel Officer (DPO for short) which reflects this position.

22

5. The applicant filed his objections against the PSL with the DPO on 15.10.1982(Annexure-D), requesting that he be ranked senior to R-7. The DPO in reply, informed, ~~that~~ the applicant on 15.11.1983(Annexure-E), that the service rendered by him on daily-wage basis, from 24.8.1969, could not be reckoned as that of a Driver in the Container-Service and that he was regularly appointed in that post, only with effect from 11.10.1969, which date was correctly taken into account for the purpose of determining his seniority.

6. As the applicant was aggrieved, he filed a writ petition in the High Court of Judicature, Karnataka, in 1983, which has since been transferred to this Bench under Section 29 of the Administrative Tribunal Act, 1985 and is now before us.

7. Shri ^{EL}Naik, learned Counsel for the applicant, urged, that the respondents had erred in overlooking the continuous service rendered by the applicant as Driver in the Container Service, in the Southern Railways at Bangalore, with effect from 24.8.1969 against a clear vacancy, under the specific order of the competent authority. Respondent-7, was given the benefit of an earlier date v.z., 15.9.1969, for appointment as a Substitute Driver, as against the date viz., 11.10.1969, for similar appointment reckoned in his case, even though R-7 had joined duty in the Southern Railways, later than he and his service was not continuous. This Shri Naik contended, was discriminatory and therefore violative of the equality principle, enshrined in Article 14 of the Constitution.

8. Shri Venugopal, learned Advocate appeared for Shri N.S.Srinivasan, learned Counsel for R-1 to R-5.

RL

Shri Vasant, ^{Ld appeared} learned Counsel for R-9, R-7 and R-8, were neither present in person nor represented by their Counsel. While Shri Vasant has filed a statement of objections on behalf of R-9, the same does not seem to have been filed on behalf of others.

9. Shri Venugopal submitted, that the Seniority List of Drivers in the Container Service at Annexure-C, was only a provisional one, and was no more in existence, as it was superseded by the Final Seniority List at Annexure-B to I.A.I, which was published, after giving due opportunity to the employees concerned, to submit their representations/objections if any. The criteria which were taken into account for the purpose of determining seniority, while finalising the PSL, were as follows :

- i) The date of appointment to a regular vacancy in the post of a Driver in the Container Service, was taken into account in accordance with Rule 302 of the Indian Railway Establishment Manual ("Manual" for short).
- ii) When two or more candidates are declared to be of equal merit at one and the same selection, their relative seniority was decided with reference to the date of birth, the older candidate being deemed senior in accordance with Rule 304 ibid.
- iii) Candidates selected for appointment earlier, were deemed to be senior, in accordance with Rule 306 ibid, to those selected later, regardless of the date of posting, except in the case covered by Rule 305 ibid.

10. Shri Venugopal asserted, that R-7 was rightly shown as senior to the applicant at S.No.6 of the Final Seniority List, in fulfillment of the above criteria. The applicant was appointed as a Substitute Driver in the Container Service at Bangalore, against a regular vacancy, with effect from 11.10.1969 and the earlier service rendered by him was either on daily-wage basis or as a stop-gap arrangement. According

Ld

to Shri Venugopal, R-7 was appointed in a similar capacity earlier, on 15.9.1969 and was elder than the applicant and has therefore been rightly shown as senior to him.

11. Shri Vasant, Counsel for R-9 submitted, that his client had joined the Railways on 15.3.1954, as a regular employee and had so continued upto 22.3.1970, till he was deemed to have entered regularly into the grade of Driver, in the Container Service. He contended, that the applicant could not claim seniority over R-9, as he was appointed later, in a regular vacancy of a Substitute Driver, in the Container Service.

12. Shri Naik, Counsel for the applicant, sought support from the decision of the Calcutta Bench of the Central Administrative Tribunal, reported in ATR 1987(1) CAT 114- P.B.DEB ROY v. UNION OF INDIA & ORS, which case he said, was alike to the one before us. We have perused this decision, which relates to promotion being denied to a senior, though there is nothing adverse against him in his service record. We notice, that this case has no relevance to the case before us, as there is nothing to prove on the basis of the facts discussed in the foregoing, that the applicant was senior to R-7 to R-9.

13. The posts of Drivers in the Container Service in the Southern Railways, seem to have been filled in from diverse disciplines, alien to the field of driving vehicles, such as 'Khalasis', Dispensary Attendants etc. Counsel for the respondents could not show us recruitment rules, if any, prescribed for filling in, the above posts of Drivers. They could not also indicate to us the dates, on which the concerned

LL

employees fulfilled the essential qualification, inclusive of practical experience, required of an incumbent for this post. We need hardly impress, that this does not conduce to the well established mode and procedure of recruitment and that in future, it is desirable that proper recruitment rules in regard to filling in the post of drivers, are framed and meticulously complied, with, so as to leave no cause for complaint. Counsel for the respondents however assured us, that the incumbents in question appointed as Drivers in the Container Service, had the requisite driving licence and experience, before their appointment as Drivers. We have no reason to disbelieve this assertion.

14. Counsel for the applicant was not able to prove that the applicant has been superseded by his juniors. His client cannot claim the benefit of a fortuitous appointment on daily-wage, ^{or} leave and stop-gap vacancies for the purpose of seniority. His all other contentions also fail in this light. The application is therefore liable to fail.

15. We, therefore, dismiss the application as devoid of merit. No order as to costs,

Chandrasekhar
MEMBER (J) 3/3/87

[Signature]
MEMBER (AM) 3.3.87

AN.