

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 28 MAR 1994

APPLICATION NUMBER: 818 of 1993.

APPLICANTS:

Sri.Raja Rao v/s.
To.

RESPONDENTS:

Secretary, M/o Railways, N Delhi & Ors.

1. Sri.G.K.Krasimha Moorthy,
Advocate, No.25, 1st Phase,
First Cross, Teachers Colony,
Bangalore-560 078.
2. The Chief Personnel Officer,
Wheel and Axle Plant,
Yelahanka, Bangalore-560 054.
3. Sri.A.N.Venugopala Gowda,
Advocate, No.8/2, Upstairs,
R.V.Road, Bangalore-4.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 17th March, 1994.

Issued
28/3/94
R.

o/c

[Signature]
for DEPUTY REGISTRAR 28/3
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.818/93.

THURSDAY, THIS THE 17TH DAY OF MARCH, 1994.

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI V. RAMAKRISHNAN .. MEMBER (A)

Raja Rao,
Working as Serang Gr.II,
in the BRI/WAP (Wheel &
Axle Plant), Yelahanka
Bangalore - 560 064. .. Applicant

(By Advocate Shri G.K. Narasimha Moorthy)

Vs.

1. Union of India
through the Secretary,
Ministry of Railways,
'Rail Bhavan',
New Delhi.
2. General Manager,
Wheel & Axle Plant,
Yelahanka, Bangalore-64.
3. Chief Personnel Officer,
Wheel & Axle Plant,
Yelahanka, Bangalore-64. .. Respondents

(By Advocate Shri A.N. Venugopal)
Standing Counsel for the Railways

ORDER

Shri V. Ramakrishnan, Member (A).

The applicant in this case is working as a Skilled Artisan in the Railways. He joined as Skilled Gr.II in the trade Serang in 1987 and was promoted as Skilled Gr.II Serang on 8.8.1989. He is aggrieved by the action of the Railways in changing the ^{earlier} pattern of promoting to higher level only persons ^{referring it} belonging to the concerned trade and by preparing a combined seniority list of Civil Engineering Artisans by bringing together various trades vide their communication dated 19.3.1993 as at



Annexure-A1. He contends that this integration has denied him the promotion opportunity which was due to him to the next higher level of Skilled Gr.I. The applicant wants us inter alia to quash the combined seniority list as at Annexure-A1 and also to issue a direction to the Railways to promote him to Gr.I skilled worker.

2. We admit this application and proceed to dispose off the case on merits.

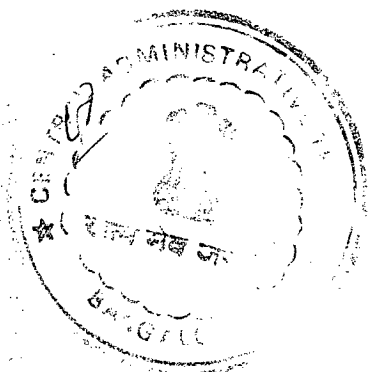
3. We have heard Shri Narasimha Moorthy, the learned counsel for the applicant as also Shri L.N. Venugopal, the learned standing counsel for the Railways.

4. We find that the Railways had taken a conscious decision to prepare a combined seniority list of persons belonging to the various trades for the reason that the previous practice of filling up vacancies in the higher level through persons belonging only to the concerned trades had resulted in limited promotional opportunities in some trades and has led to certain distortions. Accordingly, a decision was taken in March, 1993 to provide available promotional opportunities to the skilled staff of all the trades based on their combined seniority and their promotions would take place depending upon their position in their respective level. The combined seniority list based on this principle was circulated by Annexure-A1 dated 19.3.1993. We, however, notice from Annexure-A10 that there were two posts of Skilled Gr.I for the trade of Serang which were available prior to issue of Annexure-A1. According to the then Recruitment Rules, the applicant who had become Skilled Gr.II Serang in August, 1989 was number two in the seniority list of Serang and was eligible to be considered for promotion as Skilled Gr.I after

three years, i.e., August, 1992, as there were two vacancies at the level of Skilled Gr.I Sarang of which one was filled up by *leaving the applicant senior to the level of Grade II* his immediate senior. The Railways, however, did not take any action to assess the suitability of the applicant for promotion to the post of Skilled Gr.I Sarang presumably on the ground that they were contemplating to introduce the revised policy of combining the various trades by having a common seniority list.

5. As there was a vacancy available as Skilled Gr.I Sarang in August, 1992, i.e., well before the revision of the rules in March, 93 providing for a combined seniority list of persons belonging to various trades, the applicant had a right to be considered against such a vacancy when he became eligible in August, 1992. The Railways were in ~~an~~ error in not taking action as per the then existing rules, by holding back the promotion and subsequently pushing down his seniority position on the basis of the revised policy. It is well settled law that vacancies in the promotion post accruing ^{prior} to the amended rules have to be filled in accordance with the unamended rules. We may refer to the Supreme Court decision in the case of Y.V. Rangaiah & Others Vs. J. Srinivasa Rao & Others decided on 24.3.1983 reported in 1983 Supreme Court Cases (L&S) 382 and with advantage reproduce the head note.

"Labour and Services - Seniority and promotion - Panel for promotion - Delay in preparing, resulting in deprivation of chances of promotion - Panel not prepared within the time stipulated in rules and instead drawn up after amendment of the rules for promotion - Amendment dispensing with the original provision for considering L.D.Cs. along with U.D.Cs. for promotion - Consequently promotional chances of the eligible L.D.Cs. adversely affected and they were superseded by their juniors in the panel prepared in accordance with the amendment - Held, vacancies in the promotional posts occurring prior to the amendment have to be filled up in accordance with the unamended rules - Hence the panel prepared for filling those vacancies under the amended rules set aside and fresh panel under the old rules directed to be prepared - A.P. Registration and Subordinate Service Rules, Rule 4(a) (1)(1) & (a)(2) and its amendment by G.O. Ms. No. 265-Revenue (UI), dated March 22, 1977."



6. In view of this position, the applicant had a legal right to be considered for promotion to the next higher grade of Skilled Gr.I after 8.1.1992 when he had put in the requisite eligibility service in the lower level of Gr.II.

7. We, accordingly, direct the Railways to consider the applicant's suitability for promotion to the skilled Gr.I as in August, 1992 and if he is found suitable take further action on the basis of such assessment. As regards the prayer of the applicant to quash the seniority list as in Annexure-A1, which reflects the new policy of the Railways, we see no reason to do so, as this will have prospective effect and apply to vacancies arising after 19.3.1993. However, if after consideration the applicant is found fit for promotion to the level of Skilled Gr.I Sarang in August, 1992, and he should be promoted to that level and his seniority will be shown at the level of Skilled Gr.I and not as in Skilled Gr.II in the combined seniority list as at Annexure-A1.

8. With this observation, we dispose off this application with no order as to costs.

sd-
(V. RAMAKRISHNAN)
MEMBER (A)

sd-
(P.K.SHYAMSUNDAR)
VICE CHAIRMAN

psp.

R. Sankar
28/3