

(37)

IN CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD.

O.A. NO. 589 of 1987.

Date of Order: 29.1.90

K. Subba Rao.

... Applicant.

Versus

Senior Divisional Personnel
Officer, South Central Railway
Vijayawada.

... Respondent.

Counsel For Applicant: Mr. K.S.R. Anjaneyulu.

Counsel For Respondent: Mr. N.R. Devaraj SC for Railways.

C O R A M:

THE HON'BLE SHRI D.SURYA RAO: MEMBER(Judl.)

THE HON'BLE SHRI R.Balasubramanian: MEMBER (ADMN.)

(Judgment of the bench delivered by Hon'ble
Shri D.Surya Rao:HM(J)

The applicant who was initially appointed as a Gang-Man in S.C. Railways in 1970 was subsequently appointed as a Typist on ad-hoc basis by a Letter No. 4/ 8 PP Dated 8-4-1981 in the scale Rs. 260-400. Thereafter, written test, speed test and viva-voice tests were held on 27-3-83, 8-5-83 and 9-6-83 respectively. He was, by proceedings dated 18-6-1983 issued by the D.P.O. Bezawada, classified as 'Good' and declared suitable for promotion as Typist in the scale Rs. 260-400. He along with three others were placed in a provisional panel. The panel was finally approved by the Senior D.P.O. the respondent on 28-6-1984. By letter No. B/P 612/II

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dated 3-4-1987 the respondent showed the rank of the applicant as Serial No. 21 in the list of Typists working on regular basis whereas according to the applicant he should have been placed between serial numbers 4 & 5. The applicant submitted a representation on 15-6-1987 stating that he should be allowed to reckon seniority from 9-4-1981 the date from which he was continuously working as Typist and placed between serial No.s. 4 & 5. He claimed he was entitled to such seniority as his continuous officiation on ad-hoc basis was followed by regular appointment after due selection without any break. The respondent replied by letter no. B/P 612/IX/ Vol.III dated 11.8.87 that he can reckon seniority only from 18-6-83 the date of regular promotion as Typist after selection. It is the order which is sought to be assailed herein.

2. On behalf of the respondent a counter is filed denying the claim of the applicant. It is stated that the applicant was appointed on ad-hoc basis as Typist by an order dated 31-3-81 and he was informed that the promotees cannot claim seniority unless selected and regularly promoted as Typist. It is further contended that the applicant was subjected to a written test for regular selection along with others on 13-9-81 but could not qualify. Seven others who qualified were empanelled by a letter dated 2-3-1982. The applicant was not reverted but allowed to continue on ad-hoc basis. The applicant again volunteered for regular appointment pursuant to a notification dated 23-10-82 and as a result of his being selected he was included in a provisional panel dated 28-6-84 and placed at no.2. One J.Vijaya Bhaskar was placed No.1 in the panel and so applicant ranks Junior to him. It is averred in the counter that the applicant

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has been given the right ranking in the panel according to the date of his regular selection and that he cannot claim seniority over those who were selected in the earlier selection held in 1982 and empanelled on 2-3-1982. It is therefore prayed that the application may be dismissed."

3. Heard the learned counsel for the applicant Sri K.S.R.Anjanayulu and Sri N.R.Devaraj, Standing Counsel for the Railways for the respondent. On behalf of the applicant reliance is placed upon 1978(2) SLR 379 (K.C.Sharma vs. Delhi Administration) wherein it was held that if an ad-hoc appointee is subsequently regularly selected on framing of recruitment rules the regular appointment will date back to the date of ad-hoc appointment and ATR 1986 SC 49 (Narender Chedha vs. U.O.I.) wherein the period of officiation in an ad-hoc post followed by regular appointment was allowed to count for seniority. Reliance is also placed upon the decision of the Principal Bench of the Tribunal in S.C. Jain vs. Union of India (1996(2)CIT 346) in support of the proposition that the entire period of ad-hoc service followed by regular appointment will count for seniority. In our view these cases cited cannot be applied to give the benefit of seniority. The applicant and the employees in regard to whom he is claiming seniority are all departmental promotees. Admittedly the rules for promotion require empanelment after selection by holding written and viva-voice tests. It is none of the cases cited has seniority been ordered or given to employees over those empanelled in a later selection to those empanelled in an earlier selection. A person who has failed in a selection/test held on an earlier occasion or who

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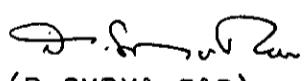
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has ~~or~~ secured a ^{lower} ~~higher~~ rank on merit cannot obviously claim seniority over those selected and included in an earlier panel or those who secure a higher ranking than him. In the instant case the rules framed are clear viz., Rules 306 of the Indian Railway Establishment code which reads as follows:

" 306 Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above."

The case of the applicant does not fall within Rule 305. Since he did not qualify in the selection/test held in 1982 and was successful only in a later selection held in 1983 he cannot obviously claim seniority over those selected and empanelled in 1982. Similarly having got a Lower Grading than J.Vijaya Bhasker in the select list for 1983 he cannot supersede him in seniority. We see no merit in the application. It is accordingly dismissed but without Costs.


(D. SURYA RAO)

MEMBER (J)


(R. BALASUBRAMANIAN)

MEMBER (J)

Dated: 29th January, 1990


DEPUTY REGISTRAR (S)
30.1.90

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TO:

1. The Senior Divisional personnel officer, south central Railway, Vijayawada.
2. One copy to Mr.K.S.R.Anjaneyulu, Advocate, 1-1-365/A, Bakaram, Jawaharnagar, Hyderabad-500 020.
3. One copy to Mr.N.R.Devaraj, SC for Railways, CAT, Hyderabad.
4. One spare copy.

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D. Surya Rao