

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD

O.A. No. 351/89.

Dt. of Decision 5-7-93

~~T.A. No.:-~~

S. Subba Rao

Petitioner

Shri V. Venkateswara Rao

Advocate for
the petitioner
(s)

Versus

The Railway Board, Rep. by its Secretary (Establishment)
Rail Bhavan, New Delhi-110001 & 4 others Respondent.

Shri N. R. Devaraj, SC for Railways

Advocate for
the Respondent
(s)

Shri P. Krishna Reddy for R4 & R5

CORAM

THE HON'BLE MR. A. B. Gorthi : Member (A)

THE HON'BLE MR. T. Chandrasekhar Reddy : Member (J)

1. Whether Reporters of local papers may be allowed to see the judgement? ✓
2. To be referred to the Reporters or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circuisted to other Benches of the Tribunal? ✓
5. Remarks of Vice-Chairman on Columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

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T. C. R.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.351/89.

Date of Judgement : 5-7-93

S.Subba Rao

.. Applicant

Vs.

1. The Railway Board,
Rep. by its
Secretary (Establishment),
Rail Bhavan,
New Delhi-110001.
2. The General Manager,
S.C.Rly., Rail Nilayam,
Secunderabad-500371.
3. The Chief Personnel Officer,
S.C.Rly., Rail Nilayam,
Secunderabad-500371.
4. P.P.N.Pillai
5. V.Venkateswara Rao .. Respondents

Counsel for the Applicant :: Shri V.Venkateswara Rao

Counsel for the Respondents:: Shri N.R.Devaraj,
SC for Railways

Shri P.Krishna Reddy
for R4 & R5

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

{ Judgement as per Hon'ble Shri A.B.Gorthi : Member(A) }

The prayer of the applicant is that he be declared senior to Respondents No.4 and 5 with all consequential benefits. The contention of the applicant is that his seniority should reckon from 28.6.1982 when he was appointed on an adhoc basis as a Senior Draftsman in the Mechanical Department of S.C.Rly.

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2. The applicant while working as Asst. Draftsman was promoted on an adhoc basis as a Senior Draftsman w.e.f. 28.6.82 vide Office Order No.54/1982. In the year 1984, 2 regular vacancies arose in the category of Senior Draftsman but the respondents took their own time to hold the required selection which was finally held in 1986. As the applicant was the lone candidate declared successful, he was empanelled on 5.9.86 for promotion to the post of Senior Draftsman. He was accordingly shown as regularly appointed as Senior Draftsman w.e.f. 5.9.86 vide Office Order No.82/1986. Thereafter, the respondents published a provisional seniority list on 22.8.88 wherein the applicant was shown as junior to Respondents No.4 and 5 who were promoted to the post of Senior Draftsman on 21.11.85 and 31.12.85 respectively. The applicant's contention is that ^{as} he was promoted as Senior Draftsman in 1982 he should be declared senior to Respondents No.4 and 5 who became Senior Draftsmen only in 1985.

3. The respondents in their reply affidavit clarified that promotion to the post of Senior Draftsman is by selection. 50% of the vacancies are to be filled up by direct recruitment and 25% of the vacancies are to be filled up from amongst Tracers and Asst. Draftsmen through limited departmental competitive examination. The remaining 25% of the vacancies are to be filled up by Asst. Draftsmen on promotion.

4. The respondents could not finalise the seniority list of Senior Draftsmen on account of several writ petitions pending before the High Court of Andhra Pradesh.

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The said cases were finalised on 12.12.86 and it was thereafter that the respondents could prepare the seniority list and hold regular selections. In other words, the contention of the respondents is that there was no deliberate or inordinate delay on their part in holding selections for promoting Asst. Draftsmen to the post of Senior Draftsman. In the selection that was held in the year 1986 the applicant was found suitable and he was accordingly promoted on a regular basis w.e.f. 5.9.86. As regards Respondents No.4 and 5, it is stated that Respondent No.4 appeared for the limited departmental competitive examination held in 1983 and was declared successful. Similarly, Respondent No.5 was a direct entry candidate recruited in 1983. When they both completed successfully their training for a period of 2 years they were regularly appointed in the year 1985. Respondents No.4 and 5 are, therefore, senior to the applicant who was regularly appointed only in the year 1986.

5. There is a counter affidavit filed by Respondent No.4 also. He contended that the applicant also volunteered to appear for the limited departmental competitive examination alongwith him but did not do so. He (Respondent No.4), having qualified in the selection test held on 23.1.83, was appointed as Senior Draftsman w.e.f. 21.11.84 on completion of his training. Respondent No.4 further contended that as in the year 1984 the applicant did not come within the zone of consideration for promotion to the post of Senior Draftsman. On account of the restructuring of the cadre introduced w.e.f. 1984 some other employees senior to the applicant

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were given the benefit of the cadre restructuring and were promoted through a modified selection system. Had the applicant been within the zone of consideration for promotion to the post of Senior Draftsman in 1984, he would have got the benefit of the cadre restructuring. Respondent No.4 thus contends that the applicant was considered for promotion to the post of Senior Draftsman in his own turn and was finally selected and regularly appointed in the year 1986. Respondents No.4 and 5 having been regularly appointed in the year 1985 could not be declared as juniors to the applicant.

6. Shri V.Venkateswara Rao, learned counsel for the applicant contended that the applicant was promoted, though on an adhoc basis, against the regular vacancy and that he continued to perform duties as a Senior Draftsman till he was finally regularised in that appointment w.e.f. 5.9.86. The contention of the applicant's counsel is that there were vacancies all along and that the respondents neglected to hold the proper selection in respect of the applicant prior to 1986. Had the respondents held the selection test in 1984, the applicant would have been appointed as a Senior Draftsman on a regular basis in 1984 itself and thus would have become senior to Respondents No.4 and 5.

7. Shri N.R.Devaraj, learned counsel for the official respondents strongly urged that as the applicant was a promotee there is no question of claiming seniority over Respondent No.4 who was selected in the limited departmental competitive examination held in 1983 and Respondent No.5 who was directly recruited in 1983. He further

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clarified that amongst the quota of promotees none Junior to the applicant was promoted on a regular basis. The applicant cannot, therefore, claim seniority over Respondents No.4 and 5 who came to be regularly appointed in compliance with the relevant rules of recruitment.

8. Shri P.Krishna Reddy, learned counsel for the private respondents (R4 and R5) stated that the initial appointment of the applicant was purely on an adhoc basis and that the appointment order itself (Office Order No.54/1982 dt. 28.6.82) clearly indicates that the said adhoc promotion would not confer any prescriptive right for continuance or otherwise of the applicant in the said post. As promotion to the post of Senior Draftsman as per the relevant recruitment rules is by selection, the applicant cannot be held to have been regularly appointed as Senior Draftsman prior to his selection held in 1986.

9. In support of his contention, the learned counsel for the applicant has placed heavy reliance on the judgement of the Hon'ble Supreme Court in the case of Rajbir Singh & Others Vs. Union of India & Others [(1992) 19 ATC 315]. In the said judgement it was held that the person appointed on an officiating basis to a substantive vacancy and working there for a considerable period of years is entitled to have his period of adhoc service to be reckoned while being regularised in the promoted post. The facts in the said case are not similar to the case on hand. In Rejbir Singh's case, the applicants therein were promoted to Class III post after holding the selection test and finding them suitable for the promoted posts (underlined for emphasis). They were working in the

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said posts ever since 1975 till 1986 when their services were regularised. It was the further contention of the applicants therein that juniors to them similarly appointed and similarly circumstanced were given their seniority taking into consideration the adhoc period of service rendered by them. Keeping in view the peculiar circumstances of that case the application was allowed and the authorities concerned were directed to determine the seniority of the applicants after taking into account the period of adhoc service. In the instant case the applicant was not subjected to a selection test prior to his promotion on an adhoc basis. It is also not the case of the applicant that anyone in the department similarly situated like him had been given the benefit of counting his adhoc service for the purpose of seniority. Consequently we cannot hold that the applicant in this case will be entitled to the same relief as was given to the applicants in the Rajbir Singh's case supra. The law as to how seniority should reckon under various circumstances has been well crystallised by the judgement of the Constitution Bench of the Hon'ble Supreme Court in the case of The Direct Recruit Class II Engineering Officers' Association and others Vs. State of Maharashtra [(1990)2 SCC 715]. Extracts of the judgement which are relevant to the case in hand are reproduced below:

"44. To sum up we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

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(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

From the above it is obvious that as the applicant's initial appointment was only adhoc and not according to rules and made as a stop-gap arrangement the officiation in such posts cannot be taken into account for considering the seniority. Shri V.Venkateswara Rao, learned counsel for the applicant, however, relied on (B) above and contended that although the applicant's initial appointment was not made strictly in accordance with the relevant recruitment rules, he having continued in the post uninterruptedly till the regularisation of his service, the period of officiating service will have to be reckoned for the purpose of his seniority. This contention of the applicant's counsel is not acceptable to us. The true purport and intent of the observation made by the Hon'ble Supreme Court at para 44(B) of the judgement in the case of The Direct Recruit Class II Engineering Officers' Association came to be examined by the Hon'ble Supreme Court in the case of Keshav Chandra Joshi and others Vs. Union of India and others (AIR 1991 SC 284). It was held that the quintessence of the proposition is that the appointment to a post must be according to rules and not by way of adhoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment made was de hors the rules, the entire length of such service cannot be counted for seniority. Propositions (A) and (B) of The Direct Recruit Class II Engineering Officers' Association case cover different aspects of the situation and the difference must be discerned critically. The proposition

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Copy to:-

1. Secretary (Establishment), Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, South Central Railway, Rail Nilayam, Secunderabad-371.
3. The Chief Personnel Officer, South Central Railway, Rail Nilayam Secunderabad-371.
4. One copy to Sri. V.Venkateswara Rao, advocate, CAT, Hyd.
5. One copy to Sri. N.R.Devaraj, SC for Rlys, CAT, Hyd.
6. One copy to Sri. P.Krishna Reddy, advocate, CAT, Hyd(R-4 &R-5)
7. One copy to Deputy Registrar(Judl.), CAT, Hyd.
8. One copy to Library, CAT, Hyd.
9. Copy to All Benches & Reporters as per standard list of CAT,Hyd
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at (B) in The Direct Recruit Class II Engineering Officers' Association case was related to such circumstances as were reflected in the case of Narendra Chadha Vs. Union of India (AIR 1986 SC 638). In that case the court noticed that the promotees, who were promoted deliberately and in disregard of the rules, were allowed to continue in the promotional posts for well over 15 to 20 years without reversion and till the date of their regularisation in accordance with the rules. The proposition at (B) in The Direct Recruit Class II Engineering Officers' Association case could be applied to such a case.

10. In the instant case, the facts as brought on record sufficiently indicate that the corollary to the proposition given at para 44(A) of the judgement in The Direct Recruit Class II Engineering Officers' Association case would squarely apply. Accordingly, we hold that the initial appointment of the applicant, ^{being} ~~he~~ only adhoc and not according to rules made, he will not be entitled to reckon the period of his officiation in the post of Senior Draftsman for counting his seniority in that post. Moreover, we are not at all satisfied that the applicant can claim seniority over Respondents No.4 and 5. They came to be regularly appointed earlier than the applicant and that too through two other different streams. To conclude, we find that the respondents have not committed any such irregularity or impropriety in showing the applicant as junior to Respondents No.4 and 5 in the impugned seniority list dt. 22.8.88.

11. In the result, we find that the application is without merit and it is hereby dismissed with no order as to costs.

T. Chandrasekhar Reddy
(T. Chandrasekhar Reddy)
Member (J).

July 6
Dated: 5 June, 1993.

br.

A. B. Gorthi
(A. B. Gorthi)
Member (A)

Dr. Raj, Srini (Judi)
17/7/93
(contd. - 9) -

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TYPED BY _____ COMPARED BY _____

CHECKED BY _____ APPROVED BY _____

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. ^{A. B. Gosh} K. BALASUBRAMANIAN :
MEMBER (ADMN)

AND

THE HON'BLE MR. T. CHANDRASEKHAR
REDDY : MEMBER (JUL)

DATED: 5/7/1993

ORDER/JUDGMENT

For typing

~~R.P./C.P/M.A.No.~~

in

O.A.No. 351/89

~~T.A.No. (W.P.No)~~

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Ordered/Rejected.

No order as to costs.

Central Administrative Tribunal
DISPATCH
7.1 JUL 1993
HYDERABAD BENCH.

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