

N THE CENTRAL ADMNISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

O.A. No. 394/89

Dt. of Decision 20-4-93.

T.A. No.

Shri N. Gopalakrishnan & Others. Petitioner

Shri P. Krishna Reddy. Advocate for
the petitioner
(s)

Versus

Chief Personnel Officer & Others. Respondent.

Shri G.V. Subba Rao & Shri D. Gopal Rao Advocate for
the Respondent
(s)

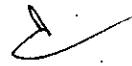
CORAM

THE HON'BLE MR.

THE HON'BLE MR.

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 circulated 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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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

HYDERABAD

OA No. 394/89

Date of judgement: 20-4-93

Between

1. N. Gopalakrishnan
2. Rajasekharan Nair
3. G. Sankaranarayana
4. R.R. Desai
5. Ch. Padma Rao
6. S.V. Ramana
7. Seelam George
8. N. Krishna Murthy
9. V.M. Cherian

: Applicants

And

1. The Chief Personnel Officer,
South Central Railway,
Secunderabad.
2. The Chief Engineer (Construction)
South Central Railway - Secunderabad.
3. The Chief Engineer (Open Line)
South Central Railway,
Secunderabad.
4. The Divisional Railway Manager, ~~Hector Gage~~
South Central Railway,
Hyderabad division at Secunderabad.
5. The Divisional Railway Manager,
(Broad Gage), South Central Railway,
Secunderabad Division at Secunderabad.
6. The Divisional Railway Manager,
Guntakal Division, S.C. Railway,
Guntakal.
7. S. Rajendran, Inspector of Works,
% the Divl. Engineer(CN)
SC Railways, Raichur at Wadi.
8. V.S. Bargoti, Inspector of Works,
% the Divl. Engineer(CN)
S.C. Railway, Adilabad at Sec'bad.
9. J.N. Gupta, Inspector of Works, % Divl.
Engineer(GB), S.C. Railway, Rajahmundry.
10. R. Raja - do - Guntakal.
11. M. Md. Ismail - do - , Vijayawada.
12. A. Sivarama Krishnan, - do -, Raichur at Wadi.
13. A.K. Gupta - do - Secunderabad.
14. J.K. Khare, - do - , Aurangabad (Maharashtra State).
15. C. Selvakumar, - do -, Vijayawada.
16. A. Satyanarayana, - do - Aurangabad
17. L. Moorthy - do - , Raichur
18. K. Sivarama Krishnan, - do - Miryalaguda, Nalgonda Dt.
19. P. Manoharan, Inspector of Works, % the Divl.
Engineer (Doubling, S.C. Rly, Tandur).

: Respondents

COUNSEL FOR THE APPLICANTS : Shri P. Krishna Reddy

COUNSEL FOR THE RESPONDENTS : Shri G.V. Subba Rao
Shri D. Gopal Rao.

CORAM

Hon'ble Justice Shri V. Neeladri Rao, Vice-Chairman.

Hon'ble Shri P.T. Thiruvengadam, Member (Admn.)

(Judgement of the divn. bench delivered by Justice
Shri V. Neeladri Rao, Vice-Chairman).

Heard Shri P. Krishna Reddy, learned counsel
for the applicants, Shri G.V. Subba Rao, learned counsel
for the Respondents 7 to 19 and also Shri D. Gopal Rao,
learned standing counsel for Respondents 1 to 6.

The applicants were promoted as Inspector of works
Gr. III with effect from 24-2-81. Respondents 7 to 19
are direct ~~recruitees~~ to the posts of I.O.Ws Gr. III in
South Central Railway, Secunderabad divn, i.e. the same
unit in which the applicants ~~were promoted~~ as I.O.Ws Gr.III.
As per rules, the direct ~~recruitees~~ were appointed after
completion of training which is for the period of one
year and it is not part of the service. The training
for Respondents 7 to 19 was commenced on 29-3-1980. Res-
pondent 1, the Chief Personnel Officer by order dated
11-11-90 curtailed the period of training for this batch
from 12 months to 6 months. The Respondents 7 to 19
were appointed to the posts of I.O.Ws Gr. III in this
unit as per proceedings dated 11-11-80 and their seniority
was reckoned with effect from 6-11-80. In the seniority
list dated 7-3-89 in regard to the seniority as on 31-1-89
in the category of I.O.Ws Gr. III, Respondents 7 to 19
the direct ~~recruitees~~ were shown above the applicants
who are the promotees. The latter submitted representa-
tions to Respondent 1 praying for revising the seniority
list by contending that their seniority ~~has~~ to be

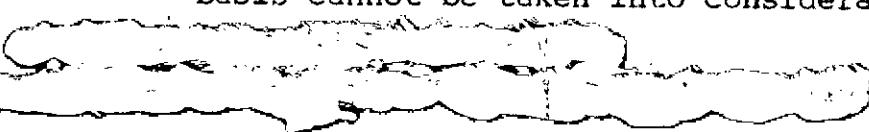
reckoned from the dates they were working in the posts of I.O.Ws Gr. III in pursuance of the orders promoting them on ad hoc basis. When the said request was turned down, this OA was filed praying for a direction to Respondents 1 to 6 to declare the seniority of the applicants from the date when they were ^{promoted} ~~selected~~ on ad hoc basis as I.O.Ws Gr. III and to allow them ~~on the said dates~~ to appear for the interview for the posts of I.O.Ws Gr. II which ^{to be} ~~was~~ held on 22-5-89 and 23-5-89. The applicants filed MA 718/91 praying for impleading the direct recruits (who are impleaded as Respondents 7 to 19 in the OA as per orders in MA 718/91.) In para 5 of the MA 718/91, the applicants prayed for impleading the direct recruits as Respondents in OA 394/83 and to direct the Respondents 1 to 6 to revise the seniority in the seniority list of I.O.Ws Gr. III dated 31.1.89 taking into consideration the period of one year of training as the basis.

pleadings

It is evident from the ~~hearings~~ that the applicants are claiming seniority over Respondents 7 to 19, the direct recruits on 2 grounds.

1) They were working as I.O.Ws Gr. III from dates long prior to the date the Respondents 7 to 19 were ^{appointed} ~~promoted~~ and hence if the service from ~~these~~ dates on which they were ^{actually} ~~working~~ as I.O.Ws Gr. III ^{is taken as the basis} ~~on ad hoc basis~~ ^{on ad hoc basis}, they will be senior to Respondents 7 to 19.

2) Even assuming that the service of the applicants from the date when they were promoted on ad hoc basis cannot be taken into consideration, still the



30/10/91

the seniority of Respondents 7 to 19 has to be fixed only from the date of expiry of one year from the date of commencement of training to Respondents 7 to 19.

When the applicants were promoted on ad hoc basis to the posts of I.O.Ws Gr. III, it was not on the basis of regular promotion. When their seniors ^{rules} _{were not willing} have not come forward for the temporary promotions, the concerned authorities considered the case of volunteers who are eligible for promotion and then promoted such volunteers to the posts of I.O.Ws Gr. III on ad hoc basis. It is now well settled that if the promotion is not in accordance with the rules, the promotee cannot claim the service rendered by him from the date on which he was promoted on ad hoc basis for fixation of seniority even ~~when~~ though he is regularly promoted in accordance with rules at a later date. As such, the contention of the applicants that their seniority in the cadre of I.O.W Gr. III has to be reckoned from the dates on which each of the applicants was promoted on ad hoc basis cannot be accepted.

Now the second contention of the applicant has to be adverted to. Rule 114 in regard to curtail ~~duration~~ of training under para 302 of Railway Establishment Manual lays down that unless specifically stated otherwise, the seniority among the incumbents to the posts in any grade is governed by the date of appointment to the grade. In categories of posts partially filled by direct ~~recruitment~~ and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotees, and the date of joining the post after due process in the case of direct recruits subject to maintenance of inter se

seniority of promotees and direct ~~recruit~~ees among themselves. As the applicants who are promotees were promoted on 24-2-81 by way of regular promotion after due process, the said date is the criterion for determination of their seniority.

R>LR19

The applicants were appointed with effect from 6-11-80 by the proceedings dated 11-11-80 issued by the Chief Personnel Officer, Respondent 1. As such, 6-11-80 is the criterion for determination of the seniority of Respondents 7 to 19, ^{waged} as per Shri G.V. Subba Rao, the learned counsel for the Respondents 7 to 19. But Shri P. Krishna Reddy, the learned counsel for the applicants stated that the applicants ^{would} have been appointed subsequent to 29-3-81, if the period of training was not curtailed, ^{and as} the said curtailment ^{of period of training} is contrary to para 114 of the Railway Establishment Manual, the notional date of appointment of Respondents 7 to 19 for the purpose of seniority has to be taken as the date ~~sub~~sequent to 29-3-81, and if it is so ~~reckoned~~ recorded, the applicants will be seniors to Respondent 7 to 19.

✓ // Para 114 in Chapter I section (b) of the Railway Establishment Manual empowers the General Manager to authorise the Chief Administrative officer ^{The rules in that chapter} to relax or modify for reasons to be recorded in writing if there are special circumstances for such relaxation or modification. It is also made clear in para 114 that the said power can be exercised even by the CPO. Para 145 of the said manual prescribes the period of training for direct ~~recruit~~ees in the category of I.O.W Gr. III and some other categories as one year, and it is not treated as part of the service. The learned counsel for the respondents produced the relevant records which disclose that the

then Chief Personnel officer, South Central Railways curtailed the period of training for the direct recruits ~~to~~ Respondents 7 to 19, from one year to 6 months. The said curtailment was ordered by the Respondent 1 when a request was made by the direct recruits for reducing the period of training from one year to 6 months as it was so done earlier in the year 1979. While Shri Subba Rao, learned counsel for the Respondents 7 to 19 contended that when the period of training was reduced from 12 months to 6 months previously, when the vacancies existed and when it was so reduced ~~in the earlier year immediately preceding it was so reduced~~ the year, the C.P.O. ordered to that effect in exercise of powers under para 114 of the Railway Establishment Manual, Shri P. Krishna Reddy, appearing for the applicants submitted that in view of the facts stated it cannot be held that special circumstances existed for reducing the period of training. Of course, it is rightly submitted by Shri G.V. Subba Rao that mala-fides were not attributed to the then Chief Personnel Officer when he reduced the period of training. Be that as it may, we cannot accept the contention for the Respondents 7 to 19 that it is a case of relaxation of the rules by reducing the period of training in view of the special circumstances. Records produced for the Respondents 1 to 6 does not disclose that it was ^{so} done due to exigencies of service. Merely on the ~~when~~ ^{merely} ground it was ~~reduced~~ for the immediately preceding year, and merely because it was not challenged, it cannot be stated that ~~was~~ a special circumstance as contemplated under para 114 for relaxing or modifying the rule. The spirit behind para 114 is to give ~~some~~ powers to some higher officers who are at the spot to modify or relax the rules if the circumstances so warrant.

Care is also taken in directing such authority to record the reasons in writing to justify such modification or relaxation of the rules. It is only in cases of urgency, the concerned authority could have ~~taken~~ recourse to that para, and the rules formulated by ^{intervened} the Railway Board should not be lightly ~~tampered~~ with. If it is so viewed, we cannot but accept the contention for the applicant promotees that the circumstances that existed before the then C.P.O for reducing the period of training cannot be held as the special circumstances as envisaged under para 114 of the Railway Establishment manual. // ✓

Shri G.V. Subba Rao, the learned counsel for Respondents 7 to 19, the direct recruits submitted that the applicants cannot be permitted to raise this plea when it was not so raised in their representations to Respondent 1 or even in the original OA, and ^{when} as the said contention was raised for the first time in MA that was filed in 1991, ^{and thus} about 2 years after cause of action. But we feel that as the applicant promotees challenged the seniority list within the time, it cannot be stated that they should not be permitted to claim that relief on the basis of another ground which was ~~raised~~ at the later stage.

It was further argued for the direct recruits that when para 302 envisages the date of appointment as the criterion for fixation of seniority and when they were appointed with effect from 6-11-80, the same cannot be altered for fixation of seniority. But when the order reducing the period of training is held as illegal and when the appointment of direct recruits ^{was to} ~~may~~ be from a date later to the date of completion of ~~training period~~ as prescribed

under rules, the notional date of joining of the direct ~~recruitees~~ has to be fixed for determining the seniority as per para 302 of Railway Establishment Manual. From the facts stated, the notional date of appointment of Respondents 7 to 19 can only be a date later than 29-3-81. Hence Respondents 7 to 19 are juniors ^{to applicants who were} ~~who were~~ regularly promoted on 24-2-81.

Hence the seniority list of I.O.Ws Gr. III of Secunderabad division as on 31-1-89 has to be re-cast by placing the applicants as seniors to Respondent 7 to 19. The OA is ordered accordingly with no costs.

P.J.26

(P.T. Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman.

(Open court dictation)

Dated 20th April, 1993.

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Deputy Registrar (J)

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To

1. The Chief Personnel Officer, S.C.Rly. Secunderabad.
2. The Chief Engineer (Construction) S.C.Rly. Secunderabad.
3. The Chief Engineer(Open Line) S.C.Rly. Secunderabad.
4. The Divisional Railway Manager, S.C.Rly, Hyderabad Division at Secunderabad. *Not in page*
5. The Divisional Railway Manager, (Broad Gauge) S.C.Rly, Secunderabad Division at Secunderabad.
6. The Divisional Railway Manager, Guntakal Division, S.C.Rly, Guntakal.
7. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
8. One copy to Mr.D.Gopal Rao, SC for Rlys, CAT.Hyd.
9. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
10. One copy to Library, CAT.Hyd.
11. One spare copy.

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