

50
(63)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 690/89

Date of Decision : 13.8.1991

T.A.No.

	Petitioner.
	Advocate for the petitioner (s)
Versus	
	Respondent.
	Advocate for the Respondent (s)

CORAM :

THE HON'BLE MR. J.NARASIMHA MURTHY : MEMBER (JUDICIAL)

THE HON'BLE MR.R.BALASUBRAMANIAN : MEMBER (ADMINISTRATIVE)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
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)


(JNM)
M(J)


(RBS)
M(A)

ND

64

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A.690/89.

Dt.of Order: 13.8.91.

A.Sree Rama Murthy

...Applicant

Vs.

1. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad-500 371.

2. The Divisional Manager (P),
Hyderabad (MG) Division,
SC Rlys., Rail Nilayam,
P.O.Secunderabad-500 371.

...Respondents

- - - - -

Counsel for the Applicant : Shri K.Sudhakar Reddy

Counsel for the Respondents : Shri Jalli Siddaiah, SC for Rlys

- - - - -

CORAM:

THE HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (J)

THE HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

(Judgment of the Division Bench delivered by
Hon'ble Shri J.N.Murthy, Member (J)).

- - - - -

This is an application filed by the applicant for a relief to declare that the applicant is entitled to be promoted as Machinist from the date of his passing the All India Trade Test on par with other similarly placed persons with effect from 25-10-65 with all consequential benefits.

Brief facts of the case are as follows :-

The applicant first appointed as Yard Khalasi Repairer in the Loco Running Shed, Kazipet on 15-2-1956 in the grade of Rs.30-1/2-35. He was confirmed in the said post with effect from 31-12-56. Later he was transferred to LGD Shed.

[Signature]

He was redesignated as Shed Khalasi (Repairs) in the same grade of Rs.30-35 with effect from 1-9-58. He passed Trade Tests dt.6-2-64, 28-6-65 and 26-9-72 for the post of Machinist. He made several representations to the Chief Personnel Officer, SC Railway, Rail Nilayam, Secunderabad and to the Loco Foreman, LGD Secunderabad for which there were no replies. His representations dt.8-5-1973, 23-7-1973, 4-9-1973, 4-5-1974, 27-5-1974, 26-7-1974, which were marked as Exhibits W-5, W-7, W-9, W-9A, W-10, W-11, W-13 and W-15 in C.M.P.No.4 of 1979 on the file of the Labour Court, A.P., Hyderabad for certifying his result received no replies. Ex. W-27 is another document, which is in the hand writing of Sri Anthony Paul, who worked as Clerk in Mechanical Division from 1963 to 1973, and who was examined as M.W.1 in the above CMP No.4/1979 shows that the applicant passed trade test along with the five others mentioned therein on 28-6-65 for the post of Machinist. Regarding the Exhibit W-27, the Labour Court, in its order dt.7-1-81 observed "Ex. W-27 is a very crucial document which shows that Sri A.Sreeramamurthy passed Trade Test on 28-6-65. If that is so, it is not known as to what else the Railway administration requires to pay him officiating allowance." The five others mentioned in Ex. W-27 were promoted as Machinists vide order dt.23-10-65 but the applicant was not given promotion. The CMP No.4/1979 was allowed by the Labour Court on 7-1-81. Against the said order, Respondents 1 and 2 filed WP No.1252/81 which was dismissed on 9-2-1983 and in WPMP 10744/82 filed by

the applicant. In WP 1252/1981 for direction to promote him, the Hon'ble High Court was pleased to observe "but I am sure that the petitioner (Railways) will certainly consider his case for promotion if he is duly qualified, without being influenced by the fact that he filed petition in the Labour Court." In spite of this observation of the Hon'ble High Court, the applicant was not promoted. He made representations again on 15-10-84 requesting to promote him with effect from 25-10-1965 from the date on which the other five candidates were promoted. There was no reply for this representation also. The applicant got issued a registered notice under section 80 CPC, which was received by the 1st Respondent on 31-1-85 by the 2nd Respondent on 1-2-85. On 8-7-85 the 2nd Respondent sent reply to the applicant informing that he is not entitled to any of the reliefs stated by him in his notice under section 80 CPC. Hence he has filed this application.

A counter has been filed on behalf of the Respondent and the contents of the counter are briefly as follows :-

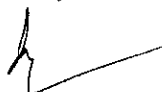
The applicant is seeking for promotion as Machinist with effect from 25-10-1965 on which date the Divisional Personnel Officer of the then Secunderabad Division gave promotions to some of the employees as Machinists (Skilled) and some others as Basic Machinists. The applicant was promoted as Basic Machinist by the same order in as much as he passed the trade test for Basic Machinist only but not

67

- 4 -

for the post of Machinist. If the applicant was aggrieved by the non-promotion as Machinist, he could have taken steps to question the action of the Railway Administration in a Court of Law within a reasonable time. The filing of an application in the Labour Court claiming officiating allowance as Machinist or filing of a Civil suit as an indigent person in the year 1986, which was rejected as not maintainable, has no bearing on the conduct of the applicant in moving^{to} this Tribunal after an unreasonably long time. It is submitted that the applicant gave a legal notice dt.29-1-1985 to which the Divisional Railway Manager (Personnel), Hyderabad (MG) Division replied on 8-7-85 stating that he was not eligible for promotion as Machinist inasmuch as he passed the trade test for Basic Machinist only. It is further stated that by inviting a reply to the belated legal notice issued in 1985, the applicant cannot get over the plea of laches and bar of limitation. On these grounds, the respondents submit that this D.A. is liable to be dismissed.

Shri K.Sudhakar Reddy, learned counsel for the applicant and Shri J.Siddaiah, learned standing counsel for the Respondents argued the matter. The simple point involved in it that according to the applicant he passed the trade test for Machinist post along with others and other persons were promoted but he was not promoted as Machinist and he made repeated representations for which the Respondents have not replied. Ultimately the applicant got issued legal notice



....5.

WMS 85/1

under section 80 CPC, for which the respondents has replied stating that the applicant has not passed the trade test, which is required to be passed, for the Machinist post till to date. Further the applicant approached the Labour Court for the allowances, for which he is entitled, for holding the Machinist job. The Labour Court has decided the matter, for which we need not take any interest ^{on} /that. Whether the applicant actually worked as Machinist or not or whether he is entitled for officiating allowances or not, is not a question before this Court. The only point for consideration is that whether he is entitled to be promoted as Machinist, if so for what reasons the department has not promoted the applicant. The department filed the necessary records in the court. After perusing the records, it is found that the applicant was permitted for taking the test for basic Machinist on 28-6-1965.

~~The department has also filed a certificate dated 28-6-1965 stating that the applicant has qualified for basic trade test.~~

~~xxxxx. The results were published on 25-10-65 stating that the following SKRs in scale Rs.70-85 (AS) who have passed the trade test for the post of Basic Machinists in scale Rs.75-110 are promoted to officiate on trial as Basic Machinists and posted to the stations mentioned against their names.~~

The applicant was also declared passed in the trade test for the post of Basic Machinist and promoted to officiate on trial basis as Basic Machinist. The ^{Contention} ~~fact~~ that he had passed the trade test for the post of Machinist is not correct and it is only a basic Machinist trade test that he has appeared and

h

To

1. The General Manager, S.C.Railway,
Railnilayam, Secunderabad- 500 371.
2. The Divisional Manager (P)
Hyderabad (MG) Division, S.C.Rlys
Railnilayam, P.O.Secunderabad-371.
3. One copy to Mr.K.Sudnakar Reddy, Advocate, CAT.Hyd.Bench.
4. One copy to Mr.J.Siddaiah, SC for Rlys, CAT.Hyd.
5. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.
6. One spare copy

pvm

[Handwritten signature]
m/2491.

5669

- 6 -

passed. There are about 14 persons who have passed the basic Machinist trade test, among whom the applicant is the second person. Afterwards the applicant had not applied for Machinist Trade Test. Further he is going on corresponding stating that he has passed the Machinist Trade Test and he is entitled to be promoted as already some other people were promoted to the post of Machinist, who passed the trade test along with him. But the record shows that the applicant only appeared and passed the Basic Machinists Trade Test. So the record clearly shows that the applicant has not appeared for and passed the Machinist Trade Test as claimed by him. It is argued by the learned counsel for the applicant that the High Court of Andhra Pradesh has directed the Respondents to consider the case of the applicant to the post of Machinist. Perhaps, when the writ was disposed of, they are not aware of this document and so they have not found any difference between the Machinist and Basic Machinist trade tests and anyhow the record shows categorically that the applicant only passed the basic machinist trade test and so his claim for promotion as Machinist cannot be accepted and so the petitioner has to pass the Trade Test for the post of Machinist, if he wants to be promoted as Machinist. In these circumstances we find no merits in the application and we dismiss the same as no order as to costs.

(J.N.MURTHY)
Member (J)

(R.BALASUBRAMANIAN)
Member (A)

av1/

Dated: 13/5/81

8/6/81
Registrar

69/81