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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.97/89.

Date of Judgment 1-3-91

C.Padmanabhan

.. Applicant

Vs.

1. Union of India,
represented by
General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. Secretary,
Railway Board,
Rail Bhavan,
New Delhi-110011.
3. Deputy Chief
Mechanical Engineer,
South Central Railway,
Wagon Workshop,
Guntupalli-521241.
4. Workshop Personnel
Officer,
South Central Railway,
Wagon Workshop,
Guntupalli-521241.
5. S.Ramu.
6. K.V.Sesha Rao.
7. P.Venkataswamy.
8. M.Balaji.
9. M.Venkata Ratnam.
10. T.Seshagiri Rao.
11. G.Mallikarjuna Rao. .. Respondents

Counsel for the Applicant : Shri V.Rama Rao

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

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

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Hon'ble Shri R.Balasubramanian : Member(Admn)

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I Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn) I

This application has been filed by Shri C.Padmanabhan under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, represented by the General Manager, South Central Railway, Rail Nilayam, Secunderabad and 10 others. Of these, Respondents No.5 to 11 are private respondents.

2. The applicant was originally appointed as a Khalasi Engineering in the Indian Railways Institute of Signal & Tele-communication (IRISET) at Secunderabad on 1.10.76. When volunteers were called for, for working in the Wagon Workshop at Guntupalli, the applicant did not get an opportunity and he chose to go to the Workshop under the bottom seniority rules. The applicant joined the Workshop at the White Metal Shop. Vide their memo dated 23.7.81 (A3), the respondents required all the staff working in the Workshops to exercise their option for particular shops. The applicant exercised his option for the Welding Shop and vide their order dated 19.10.81 (A4) the applicant was posted as a Khalasi in the Wagon Welding Shop. On 6.10.81, the applicant was subjected to a Trade Test for promotion as Basic Welder (Khalasi Helper) and he passed the test. However, Respondent No.4 informed him vide his letter dated 25.11.81 (A5) that though the applicant had passed the Trade Test held on 6.10.81 for promotion as Basic Welder he would be considered for promotion to the

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semi-skilled grade only after completion of one year's service as unskilled from 27.4.81 i.e., the date on which he joined in the Workshop under the bottom seniority rules. The applicant contends that there is no such provision to insist on this one year rule. The applicant claims that since his joining in the Workshop he has been discharging the duties of a Basic Welder and expected a promotion as Basic Welder at least from 28.4.82 on completion of the questioned one year rule but no such order came. The seniority list of the Welding Shop was published in 1982 and the applicant did not find his name in the list. He represented against it and in their reply dated 11.5.83 the respondents stated that the applicant was wrongly subjected to the Trade Test on 6.10.81. It was also stated that by the time he could complete one year of service on 27.4.82 there were no vacancies of semi-skilled Welders and all the vacancies of Basic Welders had been upgraded to skilled grade consequent to the reclassification of artisan staff. It was also stated that the seniority of the applicant was interpolated at position 499-A between 499 and 500. By another move, the respondents wanted the applicant to face a Trade Test for the Fitter's grade which the applicant declined saying that since he had already passed the Welder's Test he was not inclined to face the Trade Test for Fitters. Finally, the respondents had promoted the applicant as Khalasi Helper Welding with immediate

effect vide their order dated 27.2.86. The applicant started representing and the respondents rejected his representation vide their memo dated 5.9.88 (A.17) justifying their allotment of seniority to him. In this application the applicant prays that the order dated 5.9.88 (A.17) be treated as illegal and that he be treated as having been promoted as Basic Welder reckoning his seniority from 27.4.81.

3. The application is opposed by the respondents. It is stated that though the applicant joined the Guntupalli Workshop on 27.4.81 on bottom seniority basis, ~~many~~ persons who joined after him like the private respondents had to be placed over him in the seniority list because one Shri K.Premnath who joined the Workshop two days prior to the applicant had to be placed over the applicant and all those persons senior to him in the Act Apprentice Panel had perforce ~~also~~ ^{new} to be placed over him and thereby ~~the~~ ^{new} the applicant also even though they joined later ^{than the applicant.} As regards Respondents No.5 to 11, it is stated that they were on an I.T.I. panel which was approved on 26.3.81 prior to the Act Apprentice Panel dated 6.4.81 to which Shri K.Premnath who joined earlier than the applicant belongs. As regards the one year rule which the applicant questions, it is stated that this is provided for in the order dated 11.5.76 of the Chief Personnel Officer, South Central Railway (Annexure 3 to the reply). In terms of this they justify their

action in not giving the promotion to the applicant until he completed one year in the Workshop. It is contended that he was posted only as a Khalasi and he cannot demand the wages of a Welder/Basic Welder. It is admitted that his name was inadvertently omitted in the seniority list of Khalasis published on 1.4.82. But then on his representation it was included and interpolated at serial 499-A. It is also contended that the option exercised by the applicant for Welding Trade during 1981 was deemed invalid in view of the finalisation of the avenue charts w.e.f. 1.9.83 and as per the avenue charts ~~only~~ Khalasis working in the Wagon and Plating Shops ^{only} could ~~only~~ be promoted either as Khalasi Helper in Fitting or as Khalasi Helper in Welding Trade on option. Since the applicant preferred to be in the Welding Trade, they had promoted him accordingly w.e.f. 27.2.86.

4. We have examined the case and heard the learned counsels for the applicant and the respondents. The important grounds that the applicant had raised are:

(a) That though he passed the Trade Test on 6.10.81 he was denied promotion till 27.4.82 by which time there were no vacancies. He claims that the first vacancy that arose after 27.4.82 should have been given to him before implementing the upgradation orders.

(b) That he had been serving as welder whereas he is paid only the wages of Khalasi.

(c) That the bottom seniority principle ~~was~~ was wrong since like other units those working in IRISSET

were also entitled to go to the Workshop and that the respondents had wrongly applied the bottom seniority principle.

(d) That though the order for his transfer to the Guntupalli Workshop was issued on 2.2.81 he could join the Workshop only on 27.4.81 due to administrative delays. It is also his contention that 2.2.81, the date of issue of the order, should be taken as the criterion for regulating his seniority and not 27.4.81, the date on which he joined, after administrative delays.

5. Among the grounds he has stated we shall first take up his transfer to the Workshop. He has alleged that persons serving in IRISET were not given the option to go to the Workshop and he had to go on bottom seniority. Having accepted the situation and gone there ~~through~~ in 1981 the applicant cannot raise this question now. As regards the date from which the seniority should be reckoned in the Workshop, it is his contention that it should take effect from the date of issue of the order. Para 312 of the Railway Establishment Manual states:

(16) Transfer at request:- The staff transferred at their own request from one Railway to another should be placed below all existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment, irrespective of the date of confirmation or length of officiating service of the transferred employee (R.B's No.E/55/SR 6/6/3 of 1955)

This order is silent on the date of issue of the order. It is of interest to compare this with a similar rule followed by the P&T Department. Rule 38 of

P&T Manual Volume IV states:

(2) When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade as on that date.

The order in the case of the P&T Department is specific and is the one which the applicant wants. But the P&T Department's ~~order~~^{rule} also says that such transferees would be placed below even those in the panels that had been approved for appointment to that grade as on that date whereas the Railway Establishment Manual places such transferees only below all existing confirmed and officiating staff. Such transferees are not to be placed below those in the panels approved and who might be joining later. What is to be applied in the case of the applicant is the Railway Establishment Manual and it does not say anything about the date of issue of the order. Moreover, the respondents have averred that it is not possible at this distant date to examine whether after the issue of the letter on 2.2.81 there was any delay due to the respondents in the applicant's joining at Guntupalli. They even suggest that the delay ^{might have been} ~~may be~~ on his own. The applicant joined the Guntupalli Workshop on 27.4.81 and two days earlier Shri K.Premnath of the Act Apprentice Panel had joined. Shri K.Premnath has to be treated as senior to the applicant. If Shri K.Premnath is to be treated as senior to the applicant all those senior to Shri K.Premnath in the Act Apprentice Panel will also have to be treated as senior

to the applicant even though they joined after the applicant. In this respect we accept the contention of the respondents. However, regarding the I.T.I. panel to which Respondents No.5 to 11 belong, the contention of the respondents is that that panel is earlier than the Act Apprentice Panel. There is no stipulation in the Railway rule that the transferee should be placed below those in the approved panel. A situation similar to the Act Apprentice Panel had also not arisen in the case of the I.T.I. panel. Therefore, we feel that those in the I.T.I. panel should not be placed above the applicant if they had joined later than him. It is seen from Annexure-1 to the counter that Respondents No.5 to ~~joined~~ ^{joined} had to join the Workshop after 27.4.81. They cannot therefore be treated as senior to the applicant.

6. The applicant had passed the Trade Test on 6.10.81. The respondents contend that he was wrongly called for the test when he had not completed one year of service in the Workshop. Against this, the applicant contends that there is no one year rule. We find from Annexure-1 to the counter that in the letter dated 11.5.76 of the ^{there was} Chief Personnel Officer, the condition for promotion from unskilled to semi-skilled grade ~~is~~ ^{is} 3 years service in unskilled category relaxable to one year. The applicant has more than 3 years of service in unskilled cadre including the one in IRISET which cannot be ignored. The applicant, therefore, fulfills the required conditions and his being subjected to the test on 6.10.81 is quite

To

1. The General Manager, Union of India,
South Central Railway, Railnilayam,
Secunderabad.
2. The Secretary, Railway Board, Rail Bhavan, New Delhi-11.
3. The Deputy Chief Mechanical Engineer,
South Central Railway, Wagon Workshop, Guntupalli-241.
4. The Workshop Personnel Officer,
S.C.Railway, Wagon Workshop, Guntupalli-241.
5. One copy to Mr.V.Rama Rao,Advocate
3-6-779, Lakshminarayana Complex, Himayatnagar, Hyderabad-29
6. One copy to Mr.N.R.Devraj SC for Rlys, CAT.Hyd Bench
7. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.
8. One copy to Hon'ble Mr.R.Balasubramanian, Member(A)CAT.Hyd.
9. One spare copy.

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in order and the respondents should not have insisted on his having to wait till 27.4.82. It is also of interest to see that this is the only test that he had passed for the trade of welding and it is on this basis that he had eventually been promoted to the welder discipline in February, 1986.

7. Having decided the question of seniority of the applicant in terms of para 312 of the Railway Establishment Manual, the next question is the date from which his promotion to the cadre of welder is due. On 6-10-81 the applicant had cleared the required test ~~also~~. Hence any day after 6-10-81 which is not earlier than the day after on which any of his seniors had become welder can be the date from which he can be promoted to the cadre of Khalasi Helper Welding.

8. We, therefore, direct the respondents:

(a) to assign seniority to the applicant in the cadre of Khalasi above Respondents No.5 to 11.

(b) that the date on which he should be treated as promoted to the cadre of Khalasi Helper shall be any day after 6-10-81 and immediately after the date of promotion if need be by creating a post of his immediate senior. Such promotion will, however,

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be notional and he shall not be entitled to arrears.

9. The application is thus partly allowed with no order as to costs.

M.S
(J. Narasimha Murthy)
Member (Judl).

Dated.

1 St March 91

R.Balasubramanian
(R. Balasubramanian)
Member (Admn).

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Deputy Registrar C.P.

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CHECKED BY

APPROVED BY

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. N. UAYASIMHA : V.C.

AND

THE HON'BLE MR. D. SURYA RAO : M(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTY : M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

Dated: 1 - 3 - 1991.

ORDER / JUDGMENT:

M.A./R.A. /C.A. NO.

in

T.A. No.

W.P. No.

O.A. No. 97/89

Admitted and Interim directions
issued.

Parties
Allowed

Disposed of with direction

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected.

No order as above.

