

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT  
HYDERABAD

-TRANSFERRED/ORIGINAL APPLICATION NO. 111/89.

DATE OF ORDER:

BETWEEN:

G.Chander Rao  
& 4 others

APPLICANT(S)

A N D

General Manager,  
South Central Railway,  
Secunderabad  
& 6 others

RESPONDENT(S)

FOR APPLICANT(S): Shri G.Ramachandra Rao, Advocate

FOR RESPONDENT(S): Shri N.R.Devaraj, SC for Railways (for RR 1 & 2  
Shri P.Krishna Reddy, Advocate (for RR 3 to 7).

CORAM:

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

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

1. Whether Reporters of local papers may be allowed to see the Judgment?
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 Bench<sup>es</sup> 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)

No

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

O.A.No.111/89.

Date of Judgment: 29.3.90.

G.Chander Rao  
& 4 others

.. Applicants

Versus

General Manager,  
South Central Railway,  
Secunderabad  
& 6 others

.. Respondents

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Counsel for the Applicants : Shri G.Ramachandra Rao,  
Advocate. ✓

Counsel for the Respondents : Shri N.R.Devaraj,  
SC for Railways ✓  
(for RR 1 & 2).

Shri P.Krishna Reddy,  
Advocate  
(for RR 3 to 7). ✓

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CORAM:

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

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

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

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This is an application filed under section 19 of the  
Administrative Tribunals Act by Shri G.Chander Rao and  
4 others against the General Manager, South Central  
Railway and 6 others. Respondents 3 to 7 are private  
respondents. ✓

2. The applicants were working as Khalasis in the  
Stores Department of the South Central Railway at  
Lallaguda and Mettuguda, Secunderabad. They were  
initially engaged as casual labour on different dates

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during the years 1970 and 1971 and on completion of six months continuous service all the applicants became temporary and were entitled to the monthly scales of pay on par with temporary railway servants of similar category. Applicants 1, 2, 3 and 5 were given the monthly scales of pay with effect from 6.2.74 and applicant No.4 was given the monthly scales of pay with effect from 25.3.74. They are stated to have put in the required six months service even much earlier and the applicants contend that they were entitled to the monthly scales of pay between 1.8.71 and 1.6.73. The applicants were later regularised with effect from 20.12.77.✓

3. The applicants contend that as per Rule 109 of the Indian Railway Establishment Manual they were qualified and eligible for promotion to lower grades in Class III posts like Material Checkers in the Stores Department. According to the rule, the posts of Material Checkers should be wholly filled up by promotion from Class IV railway servants and the promotion is on the basis of seniority-cum-suitability after holding such written or practical tests as may be considered necessary. A notice was issued by the 2nd respondent on 23.1.87 inviting applications from all Class IV staff of Secunderabad Area Stores Depots and Diesel Stores Depot, Kazipet who had completed three years of continuous service as on 23.1.87 for formation of a panel for promotion as Material Checkers in the grade of Rs.225-308. It <sup>was</sup> ~~is~~ stated

in the said notification that the total number of vacancies were 16 out of which 3 posts were reserved for Scheduled Castes and 1 post for Scheduled Tribes. All the applicants applied in response, appeared for written tests which were held on 10.4.87 and 26.5.87 and all of them had passed in the written test. Through a memo dated 17.6.87, 80 candidates including the applicants who had passed in the written test were asked to appear for viva voce test held on 26.6.87 but the proposed viva voce test was postponed indefinitely without assigning any reasons. Later, through proceedings dated 22.9.87 the written examinations held on 10.4.87 and 26.5.87 were declared void. Within 20 days of cancellation of the written examination the 2nd respondent issued another notification on 10.10.87 inviting applications for formation of a panel for promotion to the post of Material Checkers. In this notification the vacancies were declared as 18, 3 of which were reserved for Scheduled Castes and one for Scheduled Tribe. The applicants again submitted their applications, appeared for the written test and passed. By a memo dated 9.2.88 the 2nd respondent called upon 46 candidates including the applicants to appear for viva voce test. A final panel of 18 successful candidates for promotion to the post of Material Checkers was prepared and published on 2.3.88 and all the 18 candidates were promoted to the post of Material Checkers. The applicant were not included in the list. On the other hand

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the list contained the names of respondents 3 to 7 though they are juniors to the applicants in service.

4. It is the contention of the applicants that respondents 3 to 7 are by far junior to them. The applicants had attained temporary status earlier than the respondents 3 to 7 whereas the respondents 3 to 7 were absorbed on regular basis earlier than the applicants. The applicants contend that seniority in the Class IV posts should be reckoned based on the date of attaining the temporary status as per para 2511 of the Indian Railway Establishment Manual. The respondents 3 to 7 are children of the loyal employees of the Railways who were directly recruited as temporary Khalasis with effect from the dates ranging between 5.8.74 and 31.12.74 and their services were regularised as Khalasis with effect from the dates of their appointment according to Office Order No.4/E/176 dated 12.1.76. The applicants further contend that the very appointment of the respondents 3 to 7 as temporary Khalasis is illegal and void. It is their contention that such honest appointment cannot confer on them any preferential seniority. /

5. The applicants also contend that the calculation of vacancies in the notification dated 10.10.87 is not correct. The applicants have worked out the vacancies as 27. It is their point that if 27 vacancies were taken into account all of them could have also been promoted

as Material Checkers on 2.3.88 alongwith the respondents 3 to 7. The applicants stated that another written test was held on 16.1.89. All the applicants had again appeared for the written test without prejudice to the cases filed by them. It is their point that these vacancies also should have been taken into account as anticipated vacancies and the old panel should have been a bigger one. /

6. The applicants have prayed for a direction declaring that the applicants are deemed to have been promoted to the post of Material Checkers with effect from 2.3.88 as on that date their immediate juniors in service were promoted to the said post with all consequential benefits including arrears of pay. -

7. The respondents 1 and 2 have opposed the prayer. The applicants were initially appointed only as substitute Khalasis and that they had no claim for permanent retention or absorption in railway service. Their services could not be regularised earlier due to administrative delays. The examinations both written and viva voce conducted on earlier occasions had to be cancelled because of malpractices adopted in the course of the written examination. Therefore they had to conduct the examination afresh after cancelling the earlier one. It is their point that the post of Material Checker is not in the normal avenue of promotion for Group-D persons. As per Rule 109 of the Indian Railway Establishment Manual, appointments



to the posts which are not in the normal avenue of promotion should be made on the basis of selection after holding written and practical tests. They had also computed that they had 18 vacant posts and had accordingly issued orders for 18 posts including those reserved for Scheduled Castes and Scheduled Tribes.

8. The respondents have not accepted the contention of the applicants that they are senior to respondents 3 to 7. Respondents 3 to 7 were selected against posts reserved for appointment of the children of the loyal employees of the Railways after the process of screening etc. The five respondents were all appointed between 5.8.74 and 31.12.74 on a regular basis. However, their initial appointment had to be in substitute capacity because they have to undergo the medical examination and verification of character and antecedents. Until and unless these are completed they could not be appointed as regular hands. Hence to cover this interregnum required for medical examination and verification of character and antecedents they were initially accommodated as substitute Khalasis and when they were found fit on both grounds they were appointed as regular hands. Their appointment therefore is on a different footing in unlike the case of the applicants where they were originally appointed as substitute Khalasis, obtained temporary status and were later appointed as regular Group-D staff. The respondents were straightway appointed as regular Group-D staff without having

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to go through the temporary status unlike in the case of the applicants. It is the point of the respondent department that respondents 3 to 7 belong to a different group or class.

9. The respondents contend that the calculation of vacancies referred to in the notification of 10.10.87 was done correctly. They have therefore contended that there is no strength in the case of the applicants which they wanted to be dismissed.

10. The respondents 3 to 7 have also filed a counter affidavit. It is their point that a seniority list as on 20.2.77 was published on 31.3.77. In that list the respondents appeared at serials 507, 515, 524, 529 and 531. The names of the applicants had not figured in that list. At that time there was no protest from the applicants. Again another list of Class IV employees as on 1.2.82 was published on 12.4.82 for the purpose of giving restructuring benefits. In that list the applicants were shown as juniors to them. Again on 10.11.83 a list containing the names of Khalasis in the grade of Rs.196-240 who were promoted to the grad of Rs.200-250 with effect from 1.8.83 on account of restructuring was published. In that list they were given positions between 187 and 199 the applicants were occupying positions between 223 and 246. They have pointed out that the applicants had not protested against this. It is their point that over a long period they had been treated as seniors to the applicants.

11. The applicants have filed a reply affidavit to the counter affidavit of respondents 1 and 2. In this they have replied to the objections raised by the respondents regarding exhausting of alternative remedies and have again contended that the test conducted should only be seniority-cum-suitability test and that they being senior should have been promoted as Material Checkers.

12. The applicants have also filed a reply affidavit to the counter affidavit of respondents 3 to 7. They have stated that the seniority lists referred to in the counter of respondents 3 to 7 had not been circulated and hence they could not protest.

13. The questions before us are:-

- (a) whether respondents 3 to 7 are senior to the applicants, and
- (b) the vacancies announced on 10.10.87 were correctly arrived at.

14. We have heard the learned counsels for both the applicants and the respondents. We have perused the records. The learned counsel for the applicants referred to the judgment of the High Court of Andhra Pradesh in which it had been held that the seniority of those appointed in the loyal workers children quota be fixed in the grade of Junior Clerks below that of the applicants based on the date of appointment.

In that case both the applicants and the respondents had contested the claims of seniority in the grade of

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Junior Clerks to which they were promoted from the cadre of <sup>Material</sup> Mail Checkers, a common grade. To this argument the respondents stated that in the instant case the respondents belong to different groups. It would be alright to decide the seniority among the Group-D staff who were initially taken as casual labour based on the date of attainment of temporary status. The children of loyal workers who were appointed against the 20% quota were appointed directly to Group-D with effect from the dates of appointment. They did not go through the stages of casual labour followed by temporary status and then regularisation. In essence it was direct recruitment. The question of attainment of temporary status in their cases therefore does not arise. If this cannot be the criterion, then the date of regular absorption in Group-D should be the consideration for determining the interse seniority between the applicants of one group and the respondents belonging to the other group. This conclusion does not offend the judgment of the learned High Court of Andhra Pradesh in the case of promotion from <sup>Material</sup> Mail Checkers to Junior Clerks. Moreover, we find as averred by respondents 3 to 7 that vide letter No.LGD/EST/1326/Pt.III dated 12.4.82 the Dy. Controller of Stores (M&E) had circulated the seniority list of Class IV staff as on 1.2.82. He had invited objections on this. In that list the respondents are shown senior to the applicants. This had not been questioned

(S.D)

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by the applicants. In their reply affidavit to the respondents 3 to 7 the applicants stated that they had not seen this seniority list. Even so in many communications that had followed later on we find that the respondents are shown above the applicants. Certainly the applicants could not have left this unnoticed and kept quiet. It was only when they did not find their names in the select list that they had brought in the question of seniority. They represented on 21.9.88 stating that they are senior to the respondents and the respondent replied vide his letter dated 11.1.89 that their seniority had been correctly fixed. We also find from a judgment dated 30.1.90 of this Bench in O.A.174/87 that a seniority list not questioned at the appropriate time, cannot be challenged at a much later stage. Hence to the question (a) of para 13 above the answer would be that the respondents 3 to 7 are senior to the applicants 15. The next question is that of vacancies announced on 10.10.87. The applicants had announced a total of 18 vacancies including 3 for Scheduled Caste and 1 for Scheduled Tribe. The service union while calculating vacancies had contended that the administration should have borne in mind that at least 8 Material Checkers would be promoted as Junior Clerks and that one Shri Narayan Mahankali, Material Checker was already empanelled for promotion as Junior Clerk. They had therefore contended that these 9 vacancies should be

To:

1. The General Manager(Union of India)South central railway, Rail Nilayam, Sec'bad.
2. The Deputy Controller of Stores (M&E) south central railway, Lalaguda, Sec'bad.
3. One copy to Mr.G.Ramachandra Rao, Advocate, 3-4-498, Barkatpura, Hyderabad-500 027.
4. One copy to Mr.N.R.Devaraj, SC for Railways, CAT., Hyderabad for RR 1 & 2.
5. One copy to Mr.P.Krishna Reddy, Advocate, 3-5-899, Himayatnagar, Hyderabad for RR 3 to 7.
6. One copy to Hon'ble Mr.R.Balasubramanian:Member:(A), CAT., Hyderabad.
7. One ~~copy~~ spare copy..

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added to 18 and the number of vacancies announced should be 27. To this, the respondent vide his letter dated 10.8.88 had replied that the actual vacancies existing were 18 and that vacancies referred to by them could not be treated as anticipated vacancies. The anticipated vacancies would be those that can be clearly anticipated such as retirements and not the uncertain ones like promotions, resignations, dismissals etc.

In the course of the hearing the learned counsel for the respondent department informed that there was no guarantee that 8 Material Checkers would be promoted as Junior Clerks. As regards Shri Narayan Mahankali, there was a disciplinary case against him and his promotion as Junior Clerk could not be taken for granted at the time of announcing the vacancies. Thus, we find the answer to the question (b) of para 13 above would be that the vacancies had been computed correctly.

16. Finding from the answers to the questions at  
that  
para 13 above/there is no case for our interference,  
the application is dismissed with no order as to costs.

( J. NARASIMHA MURTHY )  
Member (Judl).

R.BALASUBRAMANIAN  
( R. BALASUBRAMANIAN )  
Member (Admn).

Dated 29<sup>th</sup> March 90

Mr. A. Adel DEPUTY REGISTRAR (J) 303190

Draft by: Checked by: Approved by:  
D.R.(J)

Typed by: Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH.

HON'BLE MR.B.N.JAYASIMHA: (V.C.)

AND

HON'BLE MR.D.SURYA RAO: MEMBER: (JUDG.)

AND

HON'BLE MR.J.NARASIMHA MURTHY: (M) (J)

AND

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

DATED: 29.3.90.

ORDER/JUDGMENT: Corrigendum.

M.A./R.A./C.A./No. Lin

I.A.No. (W.P.No. )

D.A.No. ~~219~~ 108 111/89

Admitted and Interim  
directions issued.

Allowed.

Dismissed for default.

Dismissed.

Disposed of with direction.

M.A. ordered.

No order as to costs.

Sent to Xerox on:

