

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 94 of 1990

DATE OF JUDGMENT: 18/15 AUGUST, 1992.

BETWEEN:

Mr. Rajaiah Augaiah

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Applicant

AND

1. The Divisional Railway Manager
(Personnel) B.G.,
South Central Railway,
Secunderabad.

2. The Assistant Engineer,
S.C. Railway,
Ramaguntam.

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Respondents

Mr. V. Krishnappa for

COUNSEL FOR THE APPLICANT: Mr. M. Lakshmana Rao.

COUNSEL FOR THE RESPONDENTS: Mr. N.R. Devaraj, SC for Rlys.

CORAM:

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

Hon'ble Shri C.J. Roy, Member (Judl.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J. ROY, MEMBER (JUDL.)

This application under Section 19 of the Administrative
Tribunals Act, 1985 was filed by the applicant herein claiming

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a relief to direct the respondents to continue him as a permanent Gangman in terms of the proceedings No.AEN/RDM/E11 and Office Order No.3 of 1989 dated 28.11.89 of the second respondent after declaring the proceedings No.CP/400/Engg/Screening, dated 29.12.1989 of the 1st respondent as illegal, null and void and quash the same. The facts in brief are as follows:-

The applicant herein is a Gangman under the control of the 2nd respondent. After screening the Gangmen concerned, the 1st respondent by his proceedings dated 8.11.1989 empanelled seven workers of which the applicant who was at Sl.No.4, was also included. The 2nd respondent was directed to absorb/regularise them and the 2nd respondent in his proceedings dated 28.11.1989 absorbed them with effect from 17.4.1989, the date when the posts were sanctioned. Thereafter, the 1st respondent in his proceedings dated 11.12.1989 directed suspension of implementation of his earlier proceedings dated 8.11.1989 in respect of Gangmen at Sl.No.6 and 7 only as their case was under examination. In the same proceedings, the 1st respondent further stated that there was no objection to implement orders in respect of 4 workers at Sl.No.1 to 5 which implies that their cases were already examined. But, the 1st respondent issued another order dated 29.12.1989 suspending the entire panel dated 8.11.1989 stating that the same was under examination, which the applicant questions in this application, being arbitrary, illegal and void. The applicant made a represen-

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tation dated 8.1.1990 to the 2nd respondent which was not yet replied. There is no remedy against the impugned orders. Hence, he filed the present application for the relief stated above.

2. The respondents filed a counter stating that ~~the~~ while drawing the seniority list, some serious mistakes were crept-in insofar as arriving at the actual number of days worked by each individual which resulted in juniors getting absorbed while seniors are left out. On a representation made by the affected persons through the Mazdoor Union, the mistakes were noticed after issuing the impugned order and the same was sought to be corrected by keeping the whole list in abeyance, pending further action in the matter. Initially, the implementation of the orders of absorption of the last two persons of the panel of seven, was suspended and it was a fact that the seniority position of the first five persons was in order and accordingly vide orders dated 11.12.1989, the 1st respondent directed the respondent No.2 to absorb only the first five persons of the panel. But on a further collective representation from the affected staff, the entire seniority was closely scrutinised and it was found that even the first five in the panel also were juniors to 11 persons, considering their seniority. Hence, the administration was constrained to suspend and keep the entire list in abeyance by issuing

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the impugned order. It was decided to redraw the entire seniority list on the basis of the actual number of days worked and finalise the same after giving an opportunity to all persons concerned and fill the vacancies from the new seniority list to be prepared after due screening. Hence, it is stated that the O.A. is liable to be dismissed.

3. We have heard Shri V.Krishna^{Rao} for Mr. M.Lakshmana Rao, learned counsel for the applicant and Mr. N.R.Devaraj, learned Standing counsel for the respondents.

4. The contention of the applicant that his name appears at S.No.4 in Annexure-I is not countered by the respondents. The Office Order dated 28.11.1989 from the office of the Assistant Engineer, Ramagundam addressed to DRM/P/BG/SC, Sr.DEN/BG/SC, DEN/North/BG/SC, Sr.DAO/BG/SC and CPWI/PDPL absorbing seven QMR Gangmen and posting them as permanent Gangmen in the existing vacancies shows the name of the applicant also at Sl.No.4. This Office^{Order} is not exactly marked to the applicant. However, it is stated that it has been placed on the notice Board and the applicant has been under the notice.

5. In the Annexure-III, dated 11.12.1989, the DRM/P/BG/SC, by his proceedings No.C/P/40/Engg./Screening, suspended implementation of the orders dated 8.11.1989 in favour of Sl.Nos.6 and 7, until further advise but observed that there is no objection to implement the orders at Sl.Nos.1 to 5. But in the Annexure-IV, dated 29.12.1989 the complete panel was suspended. This is questioned by the applicant that his vested rights for being absorbed

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as permanent Gangman having been given, cannot be taken back without a notice.

6. In support of his contention, the applicant relied upon a decision of the Madras Bench of the Central Administrative Tribunal in the case of, "M.Venkaiah Vs. Union of India and others (ATR 1989(2) CAT 23)", wherein at para-5, the Hon'ble Members of the Bench observed-

"The short point for decision is whether the respondents are within their rights to rectify the wrong order passed for whatever reason without notice to the applicant. The respondents have not contested the averment made by the applicant that no notice was given. On the other hand the reply strongly contends that in such cases, no notice need be given. We do not subscribe to this point of view. We are of the opinion that any modification or cancellation of a favourable order which visits the Government employee with civil consequence, can be passed only after affording him an opportunity to represent his case by giving him due notice for the same. We would like in this context to cite the Supreme Court judgment in H.L.Trehan and ors. Vs. Union of India and ors. (1989) 1 Supreme Court cases 764. It has been held therein "that there can be no deprivation of curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by ~~ex~~ giving the government servant concerned an

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opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant, will offend against the provisions of Article 14."

The Hon'ble Members observed that any modification or cancellation of a favourable order which visits the Government servant with civil consequences, can be passed only after affording him an opportunity to represent his case by giving him due notice for the same.

7. However, the respondents in their counter averred that -

"Out of 84 sanctioned posts, 75 posts were filled in accordance with the seniority of Gangmen based on the total number of working days, setting apart 9 posts which are reserved for ST candidates. The 9 vacancies were also subsequently filled up with the ST candidates drafted from other units.

It is submitted that, the Assistant Engineer Ramagundam vide his letter No.AEN/RDM/EE/7 dated 1.7.89 requested that the 11 vacancies which were existing under the control of CPWI/Peddapalli are also to be filled up from among the 35 CMR Gangmen left over from the list of 110 candidates after effecting the recruitment of 75 candidates as mentioned supra. It is stated that the procedure followed for recruitment of CMR Gangmen on permanent basis is that basing on the casual labour service cards, the total number of working days of each individual is determined and accordingly a seniority list

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is prepared. Such of those persons in the seniority list who were screened and found suitable are absorbed on permanent basis."

The respondents also admitted that while drawing the seniority list in accordance with the procedure, some serious mistakes were crept in, in so far as arriving at the actual number of days worked by each individual, which resulted in juniors getting absorbed while seniors are left out. On a collective representation by the Mazdoor Union and the collective representation by the ~~seniority~~ effected staff, and due to industrial unrest in the Department, the respondents intend to recast the seniority list and reissue the orders. They have themselves admitted that the Administration has decided to re-draw the entire seniority list on the basis of actual number of days worked and finalise the same after giving an opportunity to all persons concerned and it was also decided to fill the vacancies from the new seniority list to be prepared after due screening.

8. The Department can always rectify its own mistakes with due notice to the concerned affected parties. It is not the case of the applicant that he has ~~not~~ been superseded by any of his juniors.

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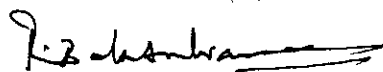
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9. Besides, the applicant has also not made any affected persons as the respondents in this case.

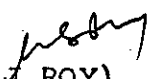
10. Therefore, we feel it reasonable that the Department can rectify its mistake after issuing a notice to the applicant in revising the seniority list.

11. The respondents are, therefore, directed to issue notice to the applicant and after considering his representation, the seniority list may be recast. In the event of recasting the seniority list after giving an opportunity to the applicant, the respondents may consider the case of the applicant for absorption as per rules.


12. With these directions, the O.A. is disposed of with no order as to costs.



(R. BALASUBRAMANIAN)
Member (Admn.)


(C. J. ROY)
Member (Judl.)

Dated: 18th August, 1992.


Deputy Resident (B)

To

1. The Divisional Railway Manager, (Personnel BG)
S.C.Rly. Secunderabad.
2. The Assistant Engineer, S.C.Rly, Ramagundam.
3. One copy to Mr. M. Lakshmana Rao, Advocate, 1-9-289/7/A
Vidyanagar, Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT. Hyd.
5. One copy to Hon'ble Mr. C. J. Roy, Member (J) CAT. Hyd.
6. One spare copy.

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

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

AND

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

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 18 - 8 - 1992

~~ORDER~~ / JUDGMENT

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

in

O.A.No. 94/90.

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

Admitted and interim directions
issued

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered / Rejected

No orders as to costs.

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Central Administrative Tribunal
DESPATCH

14 SEP 1992

HYDERABAD BENCH.