

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XERNAKULAM BENCH

HYDERABAD BENCH

O. A. No. 124/1990 199
XXX No.

DATE OF DECISION 26.11.1990

R.Ramesh Babu & another Applicant (s)

Mr.P.Krishna Reddy Advocate for the Applicant (s)

Versus

The Chief Personnel Officer, Respondent (s)
South Central Railway,
Secunderabad and 3 othersMr.N.R.Devaraj, Standing Counsel for Advocate for the Respondent (s)
S.C.Rly

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

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 Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 27.12.1989 the two applicants who have been working as Basic Lineman/under the Divisional Electrical Engineer, South Central Railway, have challenged the impugned order dated 14.8.1989 by which the earlier order dated 7.8.1989 promoting them from the grade of Rs.800-1150 to the cadre of Electrical Fitter in the scale of Rs.950-1500 was cancelled. They have further prayed that the order dated 13.11.89 stating that there is only one eligible Basic Fitter for promotion and the other three posts of Fitters be operated in the lower grade of Rs.800-1150 be set aside. The brief facts of the case are as follows.

2. The first applicant after passing the trade test was promoted as Basic Lineman on 14.9.87. The two applicants appeared in the trade test for filling up 50% of vacancies in Skilled Fitter grade of Rs.950-1500 on 7.6.89 and 27.5.89. The two applicants as well as respondent No.4 were promoted ^{having passed the trade test}

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and posted as Electrical Fitters in the existing vacancies. On 7.8.89 formal orders were issued promoting all the three of them with effect from 21.6.89. Without any notice or opportunity or assigning any reason, the second respondent passed the impugned order dated 14.8.1989 cancelling the promotion order of 7.8.89. The applicants represented on 10.11.1989 but without considering their representations, the second respondent ^{again} conducted the trade test only of respondent No.4 as the only eligible candidate and directed the 3rd respondent to downgrade the ^{remaining} three posts of Fitters and operate them in the lower scale of Rs.800-1150 by promoting the Khalasis after necessary trade test. The ^{contention} of the applicants is that after proper trade test they have been working as Basic Lineman and Head Trolleyman by the order dated 14.9.1987 and they were not given any option to opt for particular posts in the scale of Rs.800-1150 whereas respondent No.4 and two others were promoted as Basic Fitters in the same scale. The applicants were called for trade test for promotion to the Skilled Fitter grade of Rs.950-1500 vide the communication dated 15.5.89 and after passing the trade test they were promoted as Electrical Fitter. The second respondent is estopped from cancelling the order of promotion as he himself had called the applicants for trade test. Respondent No.4 is junior to the applicants and cannot, therefore, steal a march over them by promotion to the higher scale of Rs.950-1500.

3. In the counter affidavit the respondents have stated that since the order dated 7.8.89 promoting the applicants was erroneous, it was cancelled immediately. They have clarified that the two applicants who had been appointed as Khalasis in the scale of Rs.750-940 were in common seniority list. Thereafter they were trade-tested for the post of Basic Lineman and Head Trolleyman in the scale of Rs.800-1150. They have stated that in the TRD Organisation there are three wings, namely, Remote Control, Over Head Electric and Power Supply from the level of Khalasi Helper in the scale of Rs.800-1150 onwards. Once a Khalasi

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Helper is posted to one of these wings, he has to advance only in that wing and not in the other two wings. In accordance with the prescribed avenue of promotion the first applicant who was a Basic Lineman in the scale of Rs.800-1150 could seek promotion as Lineman in the scale of Rs.950-1500 and the second applicant who was a Head Trolleyman in the scale of Rs.800-1150 can seek promotion as Lineman in the scale of Rs.950-1500 in Over Head Electric sub-cadre and not as Fitter in Power Supply cadre or any other cadre. The Divisional Electrical Engineer erroneously got the two applicants trade-tested for the post of Electrical Fitter in the Power Supply cadre and the Senior Divisional Personnel Officer "in a hurry to fill up the higher grade vacancies by oversight, issued the above said memorandum dated 7.8.89 promoting the applicants herein and another Mr.M.M.Baig as Electrical Fitters". Thereafter within 8 days i.e. on 14.8.89 having noticed the mistake, the said memorandum dated 14.8.89 cancelling the promotion order was issued. Since respondent No.4 Shri Baig was the only candidate available at that time as Basic Fitter in Power Supply cadre eligible for promotion as Electric Fitter in that cadre, order has been issued trade-testing him. The applicants have no right to claim promotion resulting from the erroneous action taken by the Administration. They have denied that the applicants had represented to the respondents and have stated that they have moved the Tribunal without representing to the Administration. The posts of Electrical Fitters have been downgraded as there were no eligible candidates in the higher grade and filled up for carrying on the work.

4. In the rejoinder the applicants have averred that they were not trade-tested for Basic Lineman or Head Trolleyman posts, but for promotion from unskilled to semi-skilled posts and they were not allotted to any of the wings of TRD Organisation. They have further stated that the respondents have since included Lineman and Trolleyman's cadre as feeder cadres for promotion as Fitters and accordingly they have been asked to appear in the trade test by the order of the Sr.DPO dated 3.10.91. Without prejudice to their claims in this application, they have appeared in the trade test. Accordingly they are entitled to be regularised as Fitter on the basis of their first appointment from 21.6.89.

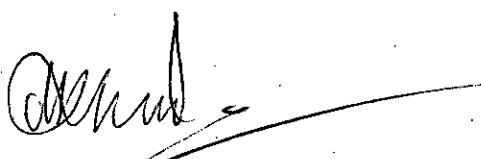
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5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. From the communication dated 15.5.1989 issued by the Divisional Electrical Engineer it is clear that for filling up the 50% of vacancies in the skilled Fitter grade, it was notified that a "trade test from amongst semiskilled Basic Fitters, Head Trolleymen and Basic Linemen" will be conducted. A copy of this notice was sent to the Senior Divisional Electrical Engineer also. The Senior Divisional Electrical Engineer by the order dated 30.6.1989 (page 7 of material index attached with the application) notified promotion and posting of the two applicants. The Sr. DPO by the order dated 7.8.89 issued another order giving the promotion and posting to the two applicants against existing vacancies. In the face of these three communications issued by different functionaries on three different dates covering a period ~~between~~ of about three months, it cannot be said that all the three functionaries were in a hurry and issued the erroneous orders admitting the applicants' category for trade test and promoting them as Basic Fitters on their passing the trade test. It may be noted that the first order dated 15.5.89 giving notice of trade test was not in respect of the applicants as such, but was a general order inviting the various categories of semiskilled workers to appear in the trade test. We cannot, therefore, accept the facile contention of the respondents that the order of promotion was issued by mistake in a hurry and the respondents are fully within their power to cancel the order of promotion summarily and in a 'ex parte' manner without giving any notice to the applicants who had been promoted and were already working in the higher grade. Our view is reinforced further by the action of the respondents themselves who by the order dated 26.2.1991 (Annexure to the rejoinder dated 1.11.91) have included the category of Trolleyman and Flagman for promotion as Fitters. Thus the applicants have become eligible for promotion as Fitter. We were not shown any order of the

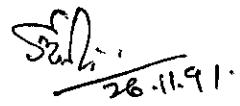
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competent authority by which it can be deduced that the applicants were not eligible for promotion as Fitters earlier. On the other hand the notice dated 15.5.1989, referred to above, issued by the Divisional Electrical Engineer shows that Head Trolleyman and Basic Lineman could also appear in the trade test for promotion as Fitter.

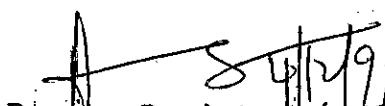
6. In the facts and circumstances we allow the application, set aside the impugned order dated 14.8.89 and direct the respondents to reappoint the applicants to the post of Electrical Fitters on the basis of their common order dated 7.8.89 as if the impugned order had never been passed. The intervening period between their reversion and repromotion will count for all purposes including seniority and increments, but without arrears of pay. There will be no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER



(S.P.MUKERJI)
VICE CHAIRMAN



Deputy Registrar (Judical.)

Copy to:-

1. The Chief Personnel Officer, South Central Railway, Secunderabad.
2. The Senior Divisional Personnel Officer, South Central Railway, Guntakal, Anantapur District.
3. The Divisional Electrical Engineer, South Central Railway, Renigunta, Chittoor District.
4. One copy to Shri. P.Krishna Reddy, C.A.T. Hyderabad.
5. One copy to Shri. N.R.Devraj, SC for Railways, CAT, Hyd.
6. One spare copy.
7. one copy to Dy. Registrar Judicial.

Rsm/-

O.A. 124/9

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. S.P. Mukerji

:V.C

AND

THE HON'BLE MR. A.V. Haridoss

M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANTAN M(A)

AND

THE HON'BLE MR.

M(J)

DATED: 26/11/1991

ORDER/JUDGMENT:

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

O.A. No.

in
124/90

T.A. No.

(W.P. No. _____)

Admitted and Interim directions
Issued.

O.A. Allowd.

Disposed of with directions 12 Dec 91

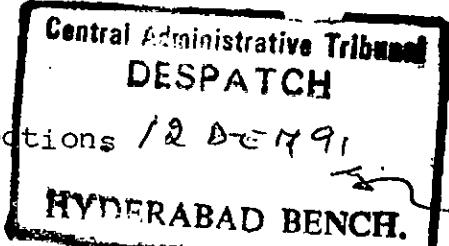
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

✓ No order as to costs.



pvm