

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 327/90.

Dt. of Decision : 5-10-94.

1. E. Gowthami Rao
2. B.K. Mallik
3. B. Dharma Rao
4. K.C. Singh Sarder
5. A. Bala @
6. Y. Jagannadha Rao
7. Y.A. Naidu

.. Applicants.

Vs

1. The General Manager,
SE Rly, Garden Reach,
Calcutta - 43.
2. Chief Personnel Officer,
SE Rly, Garden Reach,
Calcutta - 43.
3. Divisional Railway Manager,
SE Rly, Visakhapatnam.
4. Sr. Divl. Personnel Officer,
SE Rly, Visakhapatnam.
5. E.V. Ramana
6. K. Babu Rao
7. Khanialal
8. S.V. Rao
9. S.K. Shamsullah
10. Abdül Azeem
11. N. Babu Rao
12. A.O. Xaviour
13. P.J.B. Ananda Rao
14. K. Vasudava Rao
15. B.U.M. Rao

.. Respondents.

Counsel for the Applicants : Mr. P. Krishna Reddy

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC.

Mr. KV. Subrahmanya Narusu
for R-5, 6, 8, 11, 12, 13, 14 & 15.

CORAM:

THE HON'BLE SHRI A.V. HARIJASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHY : MEMBER (ADMN.)

O.A.No.327/90

Dt. of decision:5-10-1994

O R D E R

(As per the Hon'ble Sri A.B. Gorthi, Member(A))

The grievance of the applicants is in respect of the fixation of their seniority vis-a-vis the Respondents No.5 to 15 and the denial of promotion to them from the dates when Respondents 5 to 15 were promoted as Mail/Express Drivers.

2. Prior to 1-1-84 all the applicants as also Respondents 5 to 15 were promoted as 'B' Grade Drivers. The applicants were in fact promoted as 'B' Grade Drivers prior to private respondents. But the official respondents regularised the applicants as well as the respondents in the posts of 'B' Grade Drivers w.e.f. 1-1-84 after restructuring of the posts of Drivers. The applicants became due for promotion to the posts of passenger drivers in 1988. They appeared for selection for the said posts but in the panel approved by the competent authority on 28-7-89, the names of Respondents 5 to 15 were shown above those of the applicants. Further, the official respondents vide Memo. dated 15-11-89 regularised the services of respondents 11 to 15 and some others in the grade of Passenger Drivers. Subsequently, respondents 5 to 15 were further promoted as Mail/Express Drivers. The applicants therefore submit that the action of the respondents in giving higher seniority to respondents 5 to 15 and promoting them to the posts of Mail/Express Drivers, ignoring the claims of the applicants for seniority and promotion, is illegal.

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3. The respondents in their reply affidavit clarified that the cadre of passenger drivers and above was centrally controlled and as such the regular promotion to the category of passenger drivers was being made on selection on zonal basis. Such selection was held in 1983 but when the panel was exhausted, quite a few ad hoc promotions were made to fill up the vacancies which came up. In the process the applicants, though junior were given ad hoc promotion as Driver Grade-'B' earlier to their seniors in conformity with reservation roster. Later on when their seniors were also promoted, all of them were regularised w.e.f. 1-1-84 vide Memo. dt.4/11-4-86. The respondents contend that the applicants were under a wrong impression that their seniority would count from the dates of their promotion. The respondents claim that the promotion of the applicants was on ad hoc basis and that the said promotion was given following the communal roster and accordingly the applicants cannot claim seniority over their erstwhile seniors.

4. Heard learned counsel for both the parties. A similar issue as in the present O.A. came up before the Allahabad Bench of the Tribunal in VIR PAL SINGH & ORS. V/s U.O.I. 1987(2) ATR 71. In that case, following the judgement of the Allahabad High Court in J.C.Malik V/s U.O.I. it was held that the policy of reservation would apply to the posts and not to the vacancies. Further the Tribunal held, as regards seniority of promotees and on the basis of communal roster, as under:-

" The promotion on the basis of roster can only be termed as fortuitous and not in the normal course and a person who was junior and got promoted to the next grade on the basis of queue breaking

Copy to:-

1. The General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43.
3. Divisional Railway Manager, S.E.Railway, Visakhapatnam.
4. Sr. Divisional Personnel Officer, S.E.Railway, Visakhapatnam.
5. One copy to Sri. P. Krishna Reddy, advocate, CAT, Hyd.
6. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
7. One copy to Sri. K.V.Subrahmanya Narsu, advocate, for R-5,6,8,11,12,13,14 &15, CAT, Hyd.
8. One copy to Library, CAT, Hyd.
9. One spare copy.

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by virtue of the special provisions made in this regard cannot claim protection of seniority against his erstwhile senior who was waiting for his chance but could not be promoted because of the reservation. He should get back his seniority and be fixed in the proper place in the grade to which both of them now belong."

5. After carefully examining the material before us and having heard learned counsel for both the parties, we find that the action of the official respondents in the instant case is in consonance with what has been laid down in Vir Pal Singh Chauhan's case. We therefore, find no merit in this O.A. and the same is hereby dismissed.

6. Sri P. Krishna Reddy, learned counsel for the applicants states that the decision of the Tribunal in Vir Pal Singh Chauhan's case is under challenge before the Supreme Court. In view of this, we would like to observe that it is open to the applicants to proceed further in the matter in accordance with law, if they are so advised, after the decision of the Supreme Court in the S.L.P. in Vir Pal Singh Chauhan's case.

7. The O.A. is ordered accordingly with no order as to costs.

(A.B. Gorthi)
Member (A)

(A.V. Haridasan)
Member (J)

Dictated in Open Court
5th Oct. 1994

kmv

Avul Majid
DY. Registrar (Judicial)

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JA
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Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(J)

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

Dated: 5/10/94

ORDER/JUDGMENT. ✓

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

O.A.NO.

in
327/90

T.A.NO.

(W.P.NO.)

Admitted and Interim Directions
Issued.

Allowed.

✓ Disposed of with Directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

✓ No order as to costs.

YLKR

