

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 333/90.

Date of Judgment 19-4-91

K.Nageswara Rao

.. Applicant

Vs.

1. Union of India per
General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.

2. Divisional Railway Manager,
Personnel Branch,
South Central Railway,
Vijaywada.

.. Respondents

Counsel for the Applicant : Shri G.Ramachandra Rao

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

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)]

This application has been filed by Shri K.Nageswara Rao under section 19 of the Administrative Tribunals Act, 1985 against the Union of India per General Manager, South Central Railway, Rail Nilayam and another.

2. The applicant who joined the Railways in October, 1958 as a Khalasi had gradually risen to the position of Electrical Fitter Gr.II. While working as such, he appeared higher for a test conducted on 23.12.78 for the next/post of

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Electrician. He was subsequently appointed as an Electrician with effect from 3.3.80. Even before joining as Electrician in the scale of Rs.380-560 a notification was issued by the respondents asking the applicant to appear for suitability test for promotion as Electrical Fitter Gr.I in the scale of Rs.380-560. This notification was issued on 5.10.79. The applicant expressed his unwillingness to appear for the trade test. Based on this trade test which the applicant declined to appear ⁱⁿ some juniors were appointed as Electrical Fitter Gr.I with effect from 5.1.80. Later, due to the surrendering of the post of Electrician the applicant was appointed as Electrical Fitter Gr.I with effect from 24.1.86. Vide proceedings No.B/P.535/II/GS/MC dated 24.12.86 the 2nd respondent alerted the applicant to appear for the suitability test for promotion to the next higher post of Master Craftsman. No test was held. Again, vide proceedings dated 16.6.87 the 2nd respondent called upon candidates working as Electrical Fitter Gr.I to appear for the suitability test for promotion to the next higher post of Master Craftsman. In this list the applicant's name did not figure. The applicant made a representation on 23.6.87 and his representation was rejected by the 2nd respondent vide letter dated 25.6.87 stating that since the applicant had declined to appear for the suitability test in October, 1979 for promotion to the post of Electrical Fitter Gr.I he was passed over for promotion to the said post and hence he was not eligible.

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3. He has prayed that the Tribunal quash the order No.B/P.535/II/GS/MC dated 28.3.90 of the 2nd respondent and issue directions to the respondents that the applicant be treated as senior in the post of Electrical Fitter Gr.I with effect from 1.8.78 with all consequential benefits.

4. The application is contested by the respondents.

It is stated that while working as Electrical Fitter Gr.II he appeared for the suitability test for Electrician Gr.II conducted on 23.12.78 but he failed in the test. He again appeared for the test for Electrician held on 25.6.79. While the results for this test were still to be announced he was alerted for the trade test for promotion as Electrical Fitter Gr.I vide memo dated 5.10.79. But the applicant declined to appear for the trade test stating that he was awaiting the results of the test for Electrician. He was, therefore, passed over and his junior who appeared successfully in the test were promoted as Electrical Fitter Gr.I with effect from 5.1.80. The applicant who passed in the Electrician test held on 25.6.79 was appointed as Electrician with effect from 12.4.80. Those who appeared for the test for Electrical Fitter Gr.I in October, 1979 and were appointed as such with effect from 5.1.80 were given the benefit of appointment with effect from 1.8.78. Since the applicant did not appear in this test and pass, he could not be given promotion as Electrical Fitter Gr.I from 1.8.78 unlike those who successfully passed the test. The applicant became Electrical Fitter Gr.I only from 24.1.86 consequent

only to surrendering a post of Electrician which was in the same grade as Electrical Fitter Gr.I. The respondents have also raised the question of limitation and they contend that this application attracts limitation and should be dismissed on that ground alone.

5. The applicant has filed a rejoinder to the reply filed by the respondents. In this rejoinder he has mainly disputed the respondents' contention that the case attracts limitation.

6. We have examined the case and heard the learned counsels for the applicant and the respondents. ~~The issue in short is that~~ the applicant, who even before appointment as Electrician, spurned the offer to apply for Electrical Fitter Gr.I. In his letter dated 25.10.79 he had ^{started} ~~written~~ as follows:-

"I am unwilling to appear for the trade/suitability test as I have already appeared for Electrician Test and awaiting result and I decline promotion test to the next higher grade for a period of one year."

7. Based on the test for Electrician for which he appeared he was appointed as Electrician only with effect from March, 1980 ^{Carrying} ~~although it carries~~ the same scale as that of Electrical Fitter Gr.I. Against this, some of his juniors who appeared for the examination in response to the notification dated 5.10.79 were declared successful and promoted as Electrical Fitter Gr.I with effect from 5.1.80 i.e., earlier than the applicant. In terms of the Railway Board letter dated 24.8.78 these persons who were promoted

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on 5.1.80 after success in the trade test were given the benefit of promotion with retrospective effect from 1.8.78. Can the applicant who refused to appear in this trade test, therefore, claim retrospective promotion from 1.8.78? He was not promoted as Electrical Fitter Gr.I in terms of the Railway Board letter dated 24.8.78. If, much later in January, 1986, the applicant was posted as Electrical Fitter Gr.I, it was not as a result of his success in any of the tests conducted for Electrical Fitter Gr.I but solely on the ground that the post of Electrician which he was holding was abolished and the Railway Administration wanted to accommodate him in the same scale of pay. From this angle he cannot claim parity with those who passed the test and were promoted as Electrical Fitter Gr.I.

8. The applicant had given a list of chronological events. In that he had mentioned that the Railway Board had issued a letter dated 10.7.85 upgrading Electrical Fitters Gr.II to Gr.I with effect from 1.8.78. The respondents contend that the Railway Board letter No.E(PA)/82/JC dated 10.7.85 is only with reference to further upgradation with effect from 1.1.84 and not concerned with promotion with effect from 1.8.78.

9. We find that the applicant had, at no stage, passed the required trade test for Electrical Fitter Gr.I. On the other hand, when he gave a declaration on 25.10.79 that he was not willing to appear for the trade test for Electrical Fitter Gr.I he had chosen the channel of Electrician even before the publication of the result.

Subsequently, he had settled down as Electrician in the same scale as Electrical Fitter Gr.I. ^{Much later,} ~~Due to the abolition~~ of the post of Electrician he was appointed as Electrical Fitter Gr.I carrying the same scale. This cannot give him any right for seniority in the post of Electrical Fitter Gr.I on par with those (including his erstwhile juniors) who had appeared successfully in the trade test for Electrical Fitter Gr.I and were given the benefit of promotion to that grade with effect from 1.8.78.

10. In the course of the hearing the learned counsel for the applicant contended that even if the applicant had just continued as Electrical Fitter Gr.II without becoming Electrician he would still have been promoted as Electrical Fitter Gr.I with effect from 1.8.78 without facing a test, under the restructuring scheme, along with his juniors. The learned counsel for the Railways countered this stating that no person who was junior to the applicant as Electrical Fitter Gr.II had been promoted as Electrical Fitter Gr.I with effect from 1.8.78 without facing the trade test. We have seen the records and find that the three juniors whom the applicant had named viz: S/Shri K.Rayappa, B.Venkateswara Rao and M.Veeraraju, had all appeared for the trade test held in October, 1979 for Electrical Fitter Gr.I and got the benefit of promotion with effect from 1.8.78. We do not find any case supporting the contention of the applicant. We do not find any merits in the case.

W.C.

To:

1. The General Manager, Union of India, S.C.Rly,
 Railnilayam, Secunderabad.
2. The Divisional Railway Manager, Personnel Branch,
 South Central Railway,
 vijayawada.
3. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.Bench.
4. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench.
5. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J) CAT.Hyd.
6. One copy to Hon'ble Mr.R.Balasubramanian, Member(A)CAT.Hyd.
7. One spare copy.

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11. The application also attracts limitation. The applicant represented (date not given) against the Senior Divisional Personnel Officer, Vijaywada letter No.B/P.535/II/GS/MC dated 16.6.87. In this letter he had protested against his not being called for the test for promotion to the higher post of Master Craftsman while S/Shri K.Rayappa, B.Venkateswara Rao and M.Veeraraju, who were at one time his juniors, were called for the test. This request was rejected by the Senior Divisional Personnel Officer, Vijaywada vide his letter dated 25.6.87 stating that since he did not appear for the Electrical Fitter Gr.I test he was passed over for promotion to the post of Electrical Fitter Gr.I. The applicant has filed this O.A. only in April, 1990 which contains a prayer which in effect is the same as the one rejected by the respondents in June, 1987. Therefore, on the grounds of limitation also this application is liable to be dismissed.

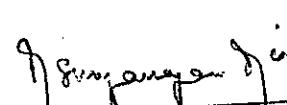
12. In the result, we dismiss this application with no order as to costs.


(J. Narasimha Murthy)
Member(Judl).


(R. Balasubramanian)
Member(Admn).

Dated

19th April 91


Deputy Registrar (Judl)

(RJD)
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TYPED BY

X

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.
AND
THE HON'BLE MR. D. SURYA RAO: M(J)
AND
THE HON'BLE MR. J. NARASIMHA MURTHY: M(J)
AND
THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 19 $\frac{1}{2}$ 4-1991.

~~ORDER / JUDGMENT.~~

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

in

T.A. No.

W.P. No.

O.A. No. 333/90

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

