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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA 587/90.

Dt. of Order:1-2-94.

1. N.C. Ghosh

2. K. Gopala Rao

...Applicants

Vs.

1. Divisional Personnel Officer,
SE Rlys, Visakhapatnam.

2. Chief Personnel Officer,
SE Rlys, Calcutta.

...Respondents

Counsel for the Applicants : Shri P.B. Vijaya Kumar

Counsel for the Respondents : Shri N.R. Devraj, ~~SC~~ for Rlys

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (A)

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(48)

O.A.NO.587/90

JUDGMENT

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri P:B.Vijaya Kumar, learned counsel for the applicants and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. The applicants joined service as temporary Bhistry and temporary Peon on 10.9.1968 and 18.8.1975/3.11.1976 respectively. Both of them were promoted as Record Sorters on 27.10.1979 and later both of them were promoted as LDCs on adhoc basis on 18.7.1984.

3. The Record Sorters are in Group 'D' while the Clerks are in Group 'C'. The recruitment rules postulate that 66 2/3 per cent of the Clerks have to be appointed on the basis of direct recruitment and the remaining 1/3rd ie., 33 1/3 per cent have to be filled up by promotion from among Group-D on the basis of competitive examination. Both these applicants appeared for the competitive examination for Clerks and both of them have become successful and they were promoted as Clerks on regular basis on 6.2.1988. This OA was filed praying for counting their service from the date of their ~~xxxxxx~~ adhoc appointment as Clerks and for fixation of seniority accordingly in the cadre of Clerks.

4. The plea of the respondents is that as the adhoc promotion of the applicants as Clerk is not after consideration of the case of all the eligible candidates, their service as Clerks till they were regularised cannot be counted for fixation of their seniority.

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5. In the reply it was stated for the applicants that after their adhoc promotion and before their regular promotion as Clerks, a number of persons were appointed as Clerk^s on compassionate grounds and there was delay in conducting examination for consideration for promotion from Group 'D' to Group 'C' and if their service before their regularisation was not taken into consideration, those who were appointed later as Clerks will become seniors and they cannot be allowed to suffer for the delay in conducting the examination.

6. In ATR 1990(2) SC 113 (The Direct Recruit Class II Engineering Officer's Association and others Vs. State of Maharashtra and others), it was observed by the Supreme Court as under:-

"The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Art. 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal

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which would violate the equality clause.
But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority." (vide para 13). (Emphasis is supplied).

7. It is evident from the pleadings that not only the Record Sorters in Group 'D' but the employees in various categories in Group 'D' in the divisions are eligible for appearing for the examination to be conducted for promotion to 1/3rd vacancies in the category of regular clerks. As it is not a ~~mere~~ case of consideration of the claims of all the eligible available persons before these two applicants were promoted on adhoc basis as Clerks, in view of the principle enunciated by the Supreme Court, it has to be held that the applicants herein are not entitled for consideration of their service before they were regularised as Clerks for fixation of seniority.

8. But it was also stated that due to administrative lapses, there was a delay in conducting the examination for consideration for promotion from Group 'D' to Group 'C'. That will have bearing for consideration of the inter se seniority between those who were promoted from Group 'D' and those who were appointed on compassionate grounds in the vacancies intended for the direct recruits. Those

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appointees were not impleaded as parties in this OA. So, we feel it not proper to advert to the same for disposal of this OA and if the applicants are so advised, they can make a representation to the concerned authority. It is needless to say that if ultimately the applicants are aggrieved by the order to be passed by the concerned authority in regard to their seniority, they are free to move this Court under Section 19 of the Administrative Tribunals Act, 1985.

9. In the result, the OA is dismissed. No costs.

(R. RANGARAJAN)
MEMBER (ADMN.)

(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 1st February, 1994.
Open court dictation.

vsn

Deputy Registrar (Judl.) ee

Copy to:-

1. Divisional Personnel Officer, S.E. Railways, Visakhapatnam.
2. Chief Personnel Officer, S.E. Railways, Calcutta.
3. One copy to Sri. P.B. Vijaya Kumar, advocate, 1-8-7/13, Chikkadapally, Hyd-20.
4. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

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

AND

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

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER
(ADMN)

Dated: 1/2/-1994.

ORDER/JUDGMENT: _____

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

O.A.No.

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.

