

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.594/90.

Date of Judgement 30.10.1992

1. Syed Basha
2. N.Nagaraju .. Applicants

Vs.

1. The Union of India,
Rep. by the Secretary(Estt),
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
S.C.Rly., Rail Nilayam,
Secunderabad.
3. The Chief Personnel Officer,
S.C.Rly., Rail Nilayam,
Secunderabad.
4. The Chief Signal & Telecom.
Engineer, S.C.Rly., Rail Nilayam,
Secunderabad.
5. The Sr. Divl. Signal & Telecom.
Engineer(Maintenance),
Guntakal Division,
S.C.Rly., Guntakal. .. Respondents

Counsel for the Applicants : Shri V.Venkateswara Rao

Counsel for the Respondents : Shri D.Gopal Rao, SC for Rlys.

CORAM:

Hon'ble Shri R.Balasubramanian : Member (A)

Hon'ble Shri C.J.Roy : Member (J)

I Judgement as per Hon'ble Shri R.Balasubramanian, Member (A) I

This application filed by Shri Syed Basha & another against the Union of India, Rep. by the Secretary(Estt), Railway Board, Rail Bhavan, New Delhi & 4 others under section 1 of the Administrative Tribunals Act, 1985 seeks a direction to place them at serials 58 and 59 in the seniority list of Asst. Draftsman/Junior Draftsman of the S&T Department, S.C.Rly. as on 31.12.88 issued by the 3rd respondent under cover of his letter dt. 7.3.89.

2. The applicants were initially selected by the Railway

Service Commission, Madras for appointment as Trainee Tracers

in the S&T Department as communicated vide their letter dt. 17.8.73. Thereafter, the applicants were appointed as Junior Clerks purely on temporary basis in September, 1976 and November, 1976. Later, they were transferred and posted as Tracers in November/December, 1979. It is the case of the applicants that since both the Junior Clerks and Tracers carry the same scale of pay of Rs.260-430 and since they were initially selected as Tracers, they should be deemed to have been appointed as Tracers in 1976 itself in the first instance ~~although when they were otherwise posted as Junior Clerks.~~ A seniority list of Tracers of the S&T Department as on 31.7.82 was issued in which the applicants were shown at serials 43 and 44 to the satisfaction. At that time they were functioning as Asst. Draftsman on adhoc basis in the scale of Rs.330-560. Thereafter, the applicants' services were regularised in the category of Asst. Draftsman w.e.f. 5.7.84. While so, the Ministry of Railways vide circular letter dt. 25.6.85 ordered upgrading of Tracers' posts into Junior Draftsman. According to this, such of the Tracers as were not having the diploma were to be promoted on completion of 5 years. In keeping with this, the Applicant No.1 was again regularised as Junior Draftsman w.e.f. 13.2.84 instead of 5.7.84. The Applicant No.1 submitted a representation seeking regularisation as Asst. Draftsman w.e.f. 1.1.84 itself. Thereafter, a provisional seniority list of Asst. Draftsman/Junior Draftsman as on 31.12.88 was issued by the 3rd respondent under cover of his letter dt. 7.3.89. In the said seniority list the applicants were shown at serials 89 and 91 while they are entitled to be shown at serials 58 and 59. Aggrieved, they represented in April/May, 1989 and again in June, 1989. Not having received any reply, they have approached this Tribunal now with the present O.A.

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3. The respondents have filed a counter affidavit and oppose the application. It is admitted that the applicants were selected in 1973 for the posts of Tracers but due to the ^{lack of} non-availability of vacancies of Tracers they could be appointed only in 1976 and that too as Office Clerks. This had the acceptance of the applicants. During the year 1978 some posts of Tracers fell vacant and the applicants were willing to accept these Tracers posts on bottom seniority. Accordingly, the applicants were posted as Tracers in February/December, 1979. The respondents also point out that the scales of pay for Clerks and Tracers are not the same. The scale for the Clerks is Rs.260-400 and for the Tracers Rs.260-430. Later, however, they were promoted as Tracers in accordance with the stipulations in the Railway Board letter dt. 25.6.85. It is their case that had not the Railway Board letter dt. 25.6.85 been issued the applicants would have taken longer time to become Asst. Draftsman.

4. We have examined the case and heard the rival sides. The applicants claim that their service as Junior Clerks should also be treated as service in the cadre of Tracers since they were originally selected as Tracers and since ^{late} _{subsequently} they were ^{transferred} and posted in 1979 as Tracers. We do not accept the claim of the applicants since the respondents had, only on grounds of compassion, offered them initially the Clerks posts when there were no posts of Tracers available. ^{and} Subsequently they transferred them to the cadre of Tracer on bottom seniority basis. Both the initial appointment as Junior Clerks and the subsequent transfer to the cadre of Tracers on bottom seniority basis had the concurrence of the applicants and they cannot question this aspect at this stage.

5. The short question now before us is whether the respondents are right in showing the applicants at ^{lower} different points in the seniority list of Asst. Draftsman after recognising their places in the seniority list of Tracers. It is stated that

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in the seniority list of Tracers as on 31.7.82 the applicants were shown at serials 43 and 44. However, in the seniority list of Asst. Draftsman they were shown only at serials 89 and 91 instead of being placed ~~immediately~~ between serials 58 and 59. According to the Railway Board memo dt. 25.6.85, when they decided to freeze the cadre of Tracers, the Railway Board decided that those possessing diploma would be upgraded as Junior Draftsman and those Tracers who did not possess the diploma would be promoted as Junior Draftsman as and when they completed 5 years of service as Tracers or acquire the necessary qualification. As a result of this, those Tracers who did not have 5 years of service but had diploma qualification were treated as promoted from 1.1.84. The non-diploma Tracers had, however, to wait for completion of 5 years. Based on the date of promotion as Asst. Draftsman their seniority list was published on 7.3.89 in the cadre of Asst. Draftsman.

6. The main question that has to be resolved is whether the respondents are right in applying the Railway Board order of June, 1985 to disturb the seniority in the cadre of Tracers when the Tracers were promoted as Asst. Draftsman. In fact, in the course of hearing, the learned counsel for the applicant challenged the vires of the Railway Board order which, according to him, is contrary to the statutory recruitment rule. Since, as can be seen from the following discussion, it is possible to resolve ~~this question~~ ^{the question before us} without going into the vires of the Railway Board order of June, 1985, we do not propose to go into the question of validity of the Railway Board order of June, 1985.

7. The applicants joined the cadre of Tracers on a certain date. The manner in which they were posted as Tracers is not relevant to the issue since the applicants had ^{already} accepted the posting to the cadre of Tracers ~~as on that date~~. They were assigned certain places in the seniority list of Tracers. They were

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satisfied with it. According to the statutory rule for promotion to the cadre of Asst. Draftsman, such promotion is to be made from amongst Tracers provided they are suitable and have put in at least 5 years of service as Tracers, General Managers have, however, power to relax in individual cases the condition of 5 years of service. If this situation had not been altered, the applicants would have moved up in their turn rubbing shoulders with the diploma-holders without any favour being conferred on the latter. Then came the letter of June, 1985 of the Railway Board. In the said letter it was conveyed that the cadre of Tracers was to be frozen. But the freezing is to be spread over a certain period of time by which time all the Tracers at that point of time would become Asst. Draftsman. The letter was issued on 25.6.85. In so far as the non-diploma Tracers were concerned, they were to be promoted w.e.f. 1.1.84 if they had over 5 years of service and in other cases as and when they completed 5 years. But, in so far as the Tracers with diploma were concerned, the order said that they will be upgraded as Junior Draftsman without insistence on the 5 years service stipulated in the case of non-diploma Tracers. It was not said that such diploma Tracers should be promoted w.e.f. 1.1.84. Where the order is silent, such promotion of the diploma-holders as ~~diploma Tracers~~ can only be from 25.6.85 the date of issue ^{of the letter} ~~at the earliest~~. The respondents are wrong in treating the diploma Tracers as promoted w.e.f. 1.1.84. The main aim of the Railway Board was to freeze the cadre of Tracers and ^{to exhaust the incumbents by promoting them as early as they can, as Asst D'men.} Draftsman. Were the Railways right in disturbing the seniority in the cadre of Tracers while fixing seniority in the cadre of Asst. Draftsman? According to the statutory ^{Recruitment} ~~Requirement~~ rule prevalent at that time there was no distinction between diploma Tracers and non-diploma Tracers for promotion to the cadre of Asst. Draftsman. At best, while the diploma Tracers did not

have to wait for 5 years to earn their promotion to the next grade as was required in the case of non-diploma Tracers further advantage in seniority in the cadre of Asst. Draftsman cannot be conferred on them. There is no provision in the recruitment rule to the cadre of Asst. Draftsman that diploma ~~Tracers~~ shall be shown above the non-diploma ~~Tracers~~ ^{promotees}. The rules had not been amended and whatever seniority existed in the cadre of Tracers should be fully reflected in the cadre of Asst. Draftsman also. ~~after promotion~~. On this point, the learned counsel for the respondents argued that according to the rules the date of promotion, irrespective of the method, should be the criterion for fixing the seniority in the cadre of Asst. Draftsman and the diploma-holders having been promoted earlier should be treated as senior to the non-diploma Tracers who were promoted later on completion of 5 years. We do not accept this contention of the learned counsel for the respondents for:

(a) as stated earlier, nowhere has it been said that the diploma Tracers should be promoted as Asst. Draftsman w.e.f. 1.1.84.

(b) such a rule would be applicable only where promotions are effected strictly according to recruitment rules and not fortuitously by special dispensation as in the present case by virtue of the order dt. 25.6.85.

8. The learned counsel for the respondents also raised the point that the applicants had not impleaded the diploma Tracers whose seniority will be affected if the applicants succeed in the O.A. What is sought to be interfered with is only provisional seniority and the covering letter dt. 7.3.89 indicates that it is open to correction. Moreover, the Hon'ble Supreme Court had held in the case of A.Janardhana Vs. Union of India (AIR 1983 SC 769) that where seniority lists are challenged on principles of rules and not specifically against particular individuals the petition could not be dismissed merely on the ground of absence of the beneficiaries

in the seniority list (in this case diploma of the judgement refers). In this case, the list is challenged and the applicant against any particular individual. The ~~objection~~ learned counsel for the respondents is, therefore, not sustainable.

9. Summing up, the relative seniority of the applicants vis-a-vis others in the cadre of Asst. Draftsman should be the same as in the cadre of Traders. We, therefore, direct the respondents to assign, in the light of the above decision, the proper places for the applicants in the seniority list of Asst. Draftsman, along with consequential benefits thereof.

10. With the above directions, the application is allowed to the extent indicated with no order as to costs.

R.Balasubramanian

(R.Balasubramanian)
Member (A).

(C.J.Roy)
Member (J).

Dated: 30 October, 1992.

8/16/1992
Deputy Registrar (J)

To

1. The Secretary(Estt) Union of India, Railway Board, Rail Bhavan, New Delhi.
Manager, S.C.Rly, Railnilayam, Secunderabad.
Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
Signal & Telecom-Engineer, Railnilayam, Secunderabad.
2. General Signal & Telecom Engineer(Maintenance) Division, S.C.Rly, Guntakal.
Advocate, C.Venkateswar Rao, Advocate, CAT.Hyd.
D.Gopal Rao, SC for Rlys, CAT.Hyd.
3. Deputy Registrar (J)CAT.Hyd.
Reporters as per standard list of CAT.Hyd. Bench.

Re: General Signal & Telecom Engineer (Maintenance)
Division, S.C.Rly, Guntakal.
Advocate, C.Venkateswar Rao, Advocate, CAT.Hyd.
D.Gopal Rao, SC for Rlys, CAT.Hyd.
Deputy Registrar (J)CAT.Hyd.
Reporters as per standard list of CAT.Hyd. Bench.