

(SFT)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 77/91.

Dt. of Decision : 14.11.94.

A. Venkateswara Rao

.. Applicant.

vs

1. Union of India per General Manager,
SC Railway, Rail Nilayam,
Secunderabad.
2. Chief Personnel Officer,
SC Rly, Rail Nilayam,
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. G. Ramachandra Rao

Counsel for the Respondents : Mr. J. Siddaiah, SC for Rlys.

CORAM:

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

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

OA.77/91

JUDGEMENT

(As per Hon. Mr. Justice V. Neeladri Rao, VC)

Heard Sri G. Ramachandra Rao, learned counsel for the applicant and Sri J. Siddaiah, learned counsel for the respondents.

2. This OA was filed praying for quashing the proceeding dated 16-11-1990 (Annexure-6) whereby the seniority list in Grade III of Signal Inspectors was revised adverse to the applicant and the other similarly situated promotees and for consequential direction to the respondents to reckon the seniority of the applicant in the category of Signal Inspector Gr.III and the next higher post above direct recruits of 1973 with all consequential benefits.

3. The facts which are relevant and which are not in controversy are as under :

The applicant who was Block Signal Maintainer (BSM) and nine others were empanelled on 23-3-1973 for promotion to the post of Signal Inspectors Gr.III. The applicant was given adhoc promotion as Signal Inspector Gr.III on 16-5-1993 and he was reverted on 18-10-1973. He was sent for pre-promotional training for eight months on 23-7-1975 and he completed the said training on 26-1-1976. He was given regular promotion as Signal Inspector Gr.III on 11-2-1976.

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4. Forty per cent of the posts of Signal Inspectors Gr.III have to be filled up by direct recruitment; 20% have to be filled up from amongst intermediate apprentices, and remaining 40% by promotion by selection.

5. Fourteen candidates were recruited by way of direct recruitment to the post of Signal Inspectors Gr.III in 1973. They have to undergo two years training for regular appointment. They were sent for training on 26-7-1973 and they completed the training on 25-7-1975. They were regularly appointed on 27-1-1976 to the posts of Signal Inspectors Gr.III. In the provisional seniority list that was prepared in regard to Signal Inspectors Gr.III in 1978, the 1973 direct recruits were shown ^{in 1973} against the promotees who were empanelled. But after ^{considering} ^{now} ^{hearing} the objections in regard to the same, the final seniority list was published on 17-12-1979 wherein the 1973 promotees were shown above 1973 direct recruits. All the above direct recruits and the promotees were promoted as Signal Inspectors Gr.II on the same day i.e. 17-10-83. When in the seniority list that was published in regard to the Signal Inspector Gr.III on 5-4-1984, when the 1973 promotees were shown below 1973 direct recruits, representations were made by the above promotees and in the revised seniority list that was published on 27-10-84, the 1973 promotees were shown above 1973 direct recruits. When representations were made by 1973 direct recruits to the effect that they should be shown above 1973 promotees ^{on 16-11-90} ^{such} the seniority list was again revised whereby ~~the~~ ^{such} of the 1973 promotees who were working as Signal Inspector Gr.II

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on adhoc basis by the time they were sent for training were shown above the 1973 direct recruits and the applicant and the remaining 1973 promotees were shown below those direct recruits. The said seniority list is challenged in this O.A.

5. Para 302 of IREM lays down that "in categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion, after due process in the case of a promotee, and date of joining the working post in case of a direct recruit, subject to maintenance of inter se seniority of promotees and direct recruits among themselves." The period of training for promotees for promotion to the post of Signal Inspectors Gr.III is 8 months, while it is 2 years for direct recruits. As the dates of appointments of the direct recruits of 1973 batch were earlier to the dates of orders of regular promotion from amongst 1973 panel were letter, in the provisional seniority list that is published in 1979, the direct recruits of 1973 batch were shown above, the promotees empanelled in 1973. But when objections were raised to the said promotees to the effect that they should not be allowed to suffer for the delay in sending them for training (when they were empanelled in 1973, they were sent for training in July, 1975), the promotees empanelled in 1973 were shown above the direct recruits of 1973 batch, in

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the seniority list published on 17-12-79. The said seniority list was acted upon in regard to the promotions to the posts of Signal Inspectors Gr.II. Of course, it was a case where 1973 direct recruits and the promotees empanelled in 1973 were promoted to the posts of Signal Inspectors Gr.II on the same date. But when in the seniority list that was published in 1984 in regard to the Signal Inspectors Gr.III, ^{The} promotees empanelled in 1973 were shown below the 1973 direct recruits, the said promotees protested and then ⁱⁿ the names were again shown over 1973 direct recruits. Again when direct recruits made representation in 1990 claiming seniority over promotees empanelled in 1973, ^{relying} by referring upon Para 302 of IREM, show cause notices were issued to the promotees and after considering their representations, the impugned order was passed.

6. It is not in controversy that the promotees including the applicant herein were empanelled in 1973. If they were sent for training in the normal course, they would have completed the training by the end of 1974. The direct recruits were selected in 1973. Even if they also were sent for training shortly after they were recruited, they could have completed the training in 1975. In such a case, the promotees empanelled in 1973 would have been promoted in 1974. The 1973 direct recruits could have been appointed at the earliest only in 1975 and in accordance with the principle laid down in Para 302, ^{The} promotees empanelled in 1973 would have become seniors

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to 1973 direct recruits and as the promotees should not be deprived of their placement in the seniority list in view of the delay on the part of the administration in sending them for training, the competent authority rightly placed the promotees empanelled in 1973 over 1973 direct recruits at the time of final publication of seniority list in 1979, and hence the same should not have been altered in 1990, urged the learned counsel for the applicant. When we enquired with the respondents as to why the applicant and others empanelled in 1973 were not sent for training till about two years after empanelment, it is stated that Sri K.K. Babu of CPO office, Secunderabad searched in the office and found that relevant record was not available, and he also informed his officers about the same.

7. Further, Para 306 of IREM envisages that a candidate selected for appointment at earlier selection shall be senior to those selected later irrespective of the dates of postings, except in the case covered by Para 305. It only means that those who are empanelled by promotion in the earlier year have to be placed above those who are empanelled for promotion in the latter year, irrespective of the dates of postings. Similarly, if the direct recruits of earlier batch are posted later than the direct recruits of latter batch, then the former will be seniors to the latter. But it is doubtful as to whether the promotees empanelled earlier to the direct recruits shall be seniors to such direct recruits. Further, when the period of training for

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promotees is only 8 months while it is 2 years for direct recruits, ^{and thus their} the possibility of promotees empanelled being posted earlier to direct recruits selected prior to the said empanelment. It is a matter for consideration as to whether in such case the direct recruits of the earlier batch can claim on the basis of Para 306 seniority over the promotees empanelled later, even when the promotees were posted earlier to the date of postings of the direct recruits. We will leave it open for consideration as it is stated for the respondents that no record is now available in regard to the years of vacancies for which the promotees were empanelled in 1973, and the years of the vacancies for which 1973 direct recruits ^{were} ~~are~~ selected. Hence, in the absence of relevant material, it is not now possible to decide as to whether the promotees empanelled in 1973 have to be given seniority over 1973 direct recruits or 1973 direct recruits have to be given seniority over those who were empanelled in 1973.

8. If there is any clerical or typographical mistake, the authority who is competent is open to correct after giving show cause notice to the ~~afflicted~~ parties. But it cannot be stated that there is such a mistake when the promotees empanelled in 1973 were placed above 1973 direct recruits while publishing the seniority list on 17-12-79. In view of the inordinate delay in sending the promotees for training, it cannot be stated that whether such delay is an administrative delay or not, is not relevant for consideration of fixing

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seniority in applying Para 302 of IREM. Hence, we cannot accept the contention for respondents that there was a typographical or clerical mistake when the promotees empanelled in 1973 were placed above 1973 direct recruit, when the seniority list was published in 1979. Hence the laches assume importance. The alteration as per the impugned seniority list was made on the basis of the representations of the direct recruits, which were made more than a decade after the seniority list in the category of Signal Inspectors Gr.III had become final in 1979, and after it was also acted upon for promotion to the posts of Signal Inspectors Gr.II in 1984 and when the promotees were again shown above the direct recruits in 1984. Hence, we feel that the respondents should have rejected the representation of the direct recruits on the ground of laches. Hence, the seniority list dt.17-12-79 to the extent of placement of applicant has to be restored.

9. After the seniority list was published in 2-1-90, the case of the applicant for promotion to the post of Signal Inspector Gr.I was considered; but his name was not included in view of his lower ranking in seniority list. The applicant was promoted as Signal Inspector Gr.I on ad hoc basis on 30-6-89 and he was continued in that post till he was regularly appointed on 1-3-93 to the post of Signal Inspector Gr.I on 1-3-93 when some of the posts were restructured and upgraded as Gr.I Inspectors.

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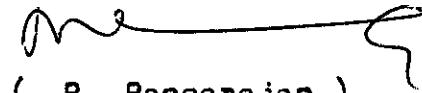
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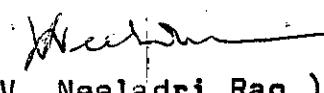


10. In the result, the impugned seniority list dt. 2-1-90 is set aside, and the seniority list published on 17-12-79 in regard to the position of the applicant is restored.

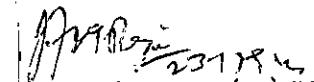
11. The case of the applicant for promotion to the post of Signal Inspector Gr.I as on the date on which his junior as per the 1979 seniority list was promoted to the said post, has to be considered, and if on that basis it is necessary to advance the date of promotion of the applicant as Signal Inspector Gr.I, he has to be paid the difference in arrears, and his seniority in the cadre of Signal Inspector Gr.I has to be fixed accordingly.

12. The O.A. is ordered accordingly. No costs. /


 (R. Rangarajan)
 Member (A)


 (V. Neeladri Rao)
 Vice Chairman

Dt. 14th Nov. 1994
Open Court Dictation.


 Deputy Registrar (J)CC

To kmv

1. The General Manager, Union of India, S.C.Railway, Railnilayam, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
3. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
4. One copy to Mr.J.Siddaiah, SC for Rlys, CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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 23-11-94