

(34)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::

O.A.No.209/91.

Date of Decision: 29/6/93

Between:

Mohd. Ibrahim

..

..

Applicant

and

1. Divisional Railway Manager,
(Personnel), Secunderabad B.G.
Division, South Central Rly.,
Secunderabad.

2. Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Sec'bad.

..

Respondents

APPEARANCE:

Counsel for the Applicant : Sri G.V.Subba Rao, Advocate

Counsel for the Respondents : Sri Jalli Siddaiah, SC for Rly.

CORAM:

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

THE HON'BLE MR. P.T. THIRUVENGADAM, MEMBER (ADMN.)

...

(JUDGMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE SRI
P.T. THIRUVENGADAM, MEMBER (A))

The applicant was appointed as Khalasi on 26-3-1951 and after due promotions he was promoted as Driver 'C' on 11-6-1980 after passing the promotional course of Drivers which is a pre-requisite for promotion. The applicant had first attended the promotional course from 1.8.1978 to 3.10.1978 but failed to pass the course. He was again sent for training during 31.8.1979 to 7.11.1978 and then

...2/-

150/2

(35)

he passed the training. Subsequently, he was promoted as Driver 'C' on 11-6-1980 in the first batch of promotions issued after applicant passing the promotion course of Drivers. In the promotion order dt. 11-6-1980 the applicant was shown at Sl.No. ⁵⁰20. Some of the Drivers Gr. 'C' promoted along with the applicant on 11-6-1980 and who were shown below the sl.No. of the applicant were promoted as Driver Gr. 'B' from 20.11.1985. The applicant is since retired from service on 31-3-1990, ^{without promotion as Driver B'} This O.A. has been filed by him for promotion as Driver 'B' on par with his juniors as per seniority list of Driver 'C' category with all consequential benefits.

2. At the outset, the learned counsel for respondents raised the issue of limitation^x stating that the cause of action for the respondents arose ~~on~~ ^{as} far as back [^] on 11-3-1987 when the applicant had been replied to on his representation against the proposed revision in seniority list of Driver 'C' category. Against this, the learned counsel for the applicant maintained that the applicant is well within the limitation inasmuch as the applicant's further representations dt. 31-1-1990 and 30-4-1990 were rejected by 1st respondent vide letters dt. 3-5-1990 and 7-6-1990. Since, these replies have discussed the points raised by the applicant in detail it has to be accepted that the O.A. has been filed in time.

3. The learned counsel for the applicant mentioned that number of juniors to the applicant as per the list of promotees

...3/-

22/8/91

issued on 11-6-1980 had been promoted as Driver 'B' ignoring the claims of the applicant and also that no notice regarding change in seniority was given to the applicant. As regards the change in seniority, the respondents have brought out that some of the staff who were promoted as Driver 'C' on 11-6-1980 along with the applicant had represented during 1986 for revision in seniority and for placement along with others promoted as Driver 'C' on 8.7.1979. Such a benefit was sought based on the provisions of Para-316 of the Indian Railway Establishment Manual. The case of the respondents is that some of those who were shown at Sl.Nos. below 50 in the promotion order for Driver 'C' category on 11-6-1980 had to be given the benefit of provisions ^{as per} in para-316 of Indian Railway Establishment Manual. Para-316 of the said Manual reads as under:-

"para-316: A railway servant who, for reasons beyond his control, is unable to appear in the examination/test in his turn along with others, shall be given the examination/test immediately he is available and if he passes the same, he shall be entitled for promotion to the post as if he had passed the examination/test in his turn.

NOTE-1. The expression 'reasons beyond his control' appearing above should be interpreted to include the following:

- (i) Sickness of the railway servant supported by the medical certificate of the authorised medical attendant;
- (ii) Sickness of the members of a railway servant's family supported by the medical certificate of the authorised medical attendant, so serious that the railway servant could not be reasonably expected to take the test;

...4/-

302/2

37

: 4 :

(iii) Proved non-receipt of intimation of the examination/test owing to being on leave or on duty elsewhere than at the headquarters or for any other reasons acceptable to the administration; and

(iv) Administration not relieving the railway servant for such examination or test."

The provisions of the above paragraph were invoked in favour of certain junior persons by giving them the benefit of deemed passing in the test even earlier to one in which they had appeared. This necessitated revision in seniority list of Drivers in Grade 'C' and a notice was sent to all the sheds/depots for displaying the revised list on the Notice Board and inviting representations against the proposed revision. In response to this, the applicant along with others had jointly represented on 22-1-1987 and through union on 11-3-1987 and the same were duly replied on 9-3-1987 and 11-3-1987 to the individuals and union respectively. Finally, on 14-10-1987, the seniority was revised. In the face of this averment by the respondents, the plea of the applicant that no notice of change in seniority was given to him cannot be accepted.

4. Coming to the issue, whether change in seniority was warranted, the respondents were asked to produce the records to justify "the reasons beyond his control" (Reference Note-1 below para-316 of IREM) with regard to such juniors, the respondents, despite repeated

...5/-

[Handwritten signature]

(38)

: 5 :

opportunities were not able to produce satisfactory record to bring out the reasons for invoking the above para. It could not be established that there were justified grounds in giving the juniors the benefit of deemed passing in an earlier promotion course by which further advantage of being interpolated in the promotion list for Driver 'C' dt.8-7-1979, the one issued earlier to the promotion list of 11-6-1980, was conferred to them. Hence, we hold that further promotion of such juniors on the assumption that they had to be given their promotion as Driver 'C' on 8-7-1979 and not on 11-6-1980 when they had actually taken over, without considering the case of the applicant, is not in order. Accordingly, the case of the applicant for promotion to Driver 'B' category should be considered as per his position in the promotion order of Driver 'C' issued on 11-6-1980 ignoring the promotions of all such juniors who had been interpolated in Driver 'C' promotion list dt. 8-7-1979. The date on which the applicant would have been promoted as Driver 'B' but for the promotion of such juniors (the applicant had mentioned the names of S/Shri G.Sunder, S.Balaraj, Lingaiah, R.Lingam, Md.Yakub Ali, A.A.Shariff and Ramulu of whom Sri G.Sundar R. is shown at Sl.No.49 against the name of the applicant shown at Sl.No.50) should be worked out and the applicant given the benefit of promotion as Driver 'B' from that date.

..6/-

CHPQ

(39)

5. The O.A. is disposed-of accordingly. Respondents are directed to review the records to work-out the date on which the applicant could have been considered for the post of Driver 'B' as per his turn ignoring the promotions to those juniors who were later interpolated in the promotion list dt. 8.7.1979. Communication of the result of such review along with payment of arrears from the deemed date should be completed within three months from the date of receipt of this order. No costs.

P.T. Thiruvengadam

(P.T.Thiruvengadam)
Member (A)

V. Neeladri Rao

(V.Neeladri Rao)
Vice Chairman

Dated 29.6.1983

[Signature]
Deputy Registrar (J)

grh.

To

1. The Divisional Railway Manager(Personnel)
Secunderabad B.G. Division, S.C.Rly, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly.
Railnilayam, Secunderabad.
3. One copy to Mr.G.V.Subba 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.

pvm

*6th of July
page 20
3/6/83*