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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.317/91

Date of Order: 6.7.1993

BETWEEN:

1. Syed Shabir Hussain
2. R.Keertivasan
3. K.Gopal
4. P.Appa Rao

.. Applicants.

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1. The General Manager,
South Central Railway,
Railnilayam, Secunderabad.
2. The Chief Personnel Officer,
South Central Railway,
Railnilayam, Secunderabad.
3. Divisional Railway Manager (P),
South Central Railway,
Broad Gage, Secunderabad.

.. Respondents.

Counsel for the Applicants

.. Mr.P.V.S.S.S.Rama Rao

Counsel for the Respondents

.. Mr.D.Gopal Rao

CORAM:

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

HON'BLE SHRI P.T.THIRUVENGADAM : MEMBER (ADMN.)

Order of the Division Bench delivered
by Hon'ble Shri Justice V. Neeladri Rao, Vice-Chairman.

The applicants herein are selected as Traffic Apprentices and posted as Yard Masters. Till 1.10.1984 there was common seniority for Station Superintendents, Traffic Inspectors, and Yard Masters. On 1.10.1984 they were bifurcated into Yard Masters as one category, and Station Superintendents and Traffic Inspectors as the other category. By order that was passed at the time of bifurcation the staff were taken into respective categories "as is ^{where is} ~~various~~ basis". As the applicants happened to be Yard Masters by 1.10.1984 they were taken into that category. The applicants have filed O.A.303/86 on the file of this Bench praying for a direction that the applicants may be given an option to opt ~~either for Yard Master category or to the Station Superintendent/~~ Traffic Inspectors category w.e.f. 1.10.84. The same was disposed of by this Bench by an order dated 22.2.1990. ^TWhereby the respondents were directed to permit the applicants to exercise option and if such option is exercised, the same shall be deemed to have taken into effect from 1.10.1984, the date on which the cadre was found. It was further observed therein that the applicants would be entitled for consequential benefits as a result of such option. In pursuance of the said order the applicants exercised the option to come to the category of Station Superintendent/Traffic Inspector. and the same was ^{accepted} ~~accepted~~ on 23.1.1991.

2. The next promotional post carries the pay scale of Rs.2000-3200 and it is promotion by selection. ~~Then the~~ ^{the} respondents informed the applicants by proceedings dated 21.3.1991 that the written test for promotion would be conducted on 31.3.1991 and they have to ~~be appeared to~~ ^{for promotion} for the same for consideration. The said proceedings are challenged in this O.A.

3. The contentions ^{for} of the applicants are as under.

(1) When the respondents had not call ^{ed} the applicants to appear for the written test ~~examination~~ that was conducted for the earliest vacancies which had come into existence from 1.10.1984, ^{and for which} ~~when~~ they would have appeared, if they were ask ^{ed} to opt for Station Superintendent/Traffic Inspector on or after 1.10.1984, they have to be promoted without conducting a test as the mistake is on the part of the respondents in not requesting them to exercise the option. 1989 suppliment 1 Supreme Court Cases 393 is relied upon in this context.

(2) The examination cannot be conducted for the applicants and their juniors at a time, ^{when} ~~for~~ their juniors had to be considered with regard to later vacancies, while they have to be considered for the earlier vacancies.

(3) There is an infirmity in ^{selecting} ~~electing~~ only 21 candidates for the examination for the 12 vacancies, ^{when} as per rules, ^{this the} number of vacancies have to be ^{selected} ~~electd~~ to for the examination.

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(4) Next below the rule had to be followed in such cases, and ^{as} their juniors were promoted long time back they too had to be promoted from the date on which their juniors were promoted, and hence the respondents were not justified in requiring the applicants to appear for the written examination.

4. As per the interim order dated 2.12.1991 the applicants were permitted to appear for the test. It was further observed therein that the result of the said test should not be declared until further orders. All these 4 applicants appeared for the written test and they were successful in the written examination and they were called for interview. The result ^{after} of the interview has not ^{been} published with regard to the 4 applicants in view of the interim orders.

5. The order in O.A. 303/86 ^{is} to the effect that the applicants should be deemed to have exercised the option as on 1.10.1984. But it is not stated therein that they have to be permitted to the post carrying pay scale of Rs.2000-3200 even without ^{being} subject to themselves ~~to~~ the selection process. In view of the order in OA.303/86 the applicants would be entitled to the promotion from the dates on which their respective juniors were promoted, if they are selected at the first ^{attempt} ~~time~~. Hence the contention of the applicants that they need not appear for the test is not tenable. In 1989 supplement 1 Supreme Court 393 the Supreme Court considered a case where relevant rule is relaxed in regard to the persons ^{coming} ~~calling~~ ^{in the late pass} ~~into the~~ category. The said relaxation was held as justified for no examinations were held for number of years. But that judgement does not ^{help} ~~hold~~ the applicants here, as it

is not a case where this Tribunal observed about such relaxation.

6. The next below rule is applicable & if the applicants are also selected for promotion whenever it is a case of promotion on the basis of selection, no senior can claim that he too should be promoted as his junior is promoted, even though when he is not selected.

7. No prejudicial ^{caused} ~~caused~~ to the applicants when the number of employees to be ^{selected} ~~called~~ for the written test is less than the number as per the stipulated ^{rule} ~~ground~~. But factually also the contention of the applicants in regard to this aspect is not correct for the proceedings dated 21.3.1991 show ^{selected} ~~that~~ 36 were ~~selected~~ for the written examination when the 12 vacancies were there.

8. There is no need to consider the 3rd contention of the applicants that the examination should have been separately conducted for the applicants in view of the facts in this case. It is on record that no one was outstanding and all the candidates ~~should~~ passed in the written test are within the category of 'Good' ~~so~~. ^{If} ~~so~~ ^{if} the applicants passed in the viva-voce they will naturally get their seniority ^{from the} ~~dates~~ on which their respective juniors ^{have} ~~who are~~ promoted, even ~~from~~ assuming that some of the juniors are going to ^{be} ~~placed~~ in the category of outstanding, still it will not cause prejudice to the applicants for their empanelment will be different from the empanelment of their juniors ~~who~~ appeared in 1991 examination.

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9. M.A.809/92 is filed for a direction for publishing the result, on the basis of ^{conducted} viva-voce in regard to the applicants.

10. In the result the respondents are directed to publish the result of the examination on the basis of the viva-voce ^{conducted} in regard to the applicants, and if they ^{will be} are selected they ^{have} ~~had~~ to be given promotion w.e.f. the dates on which their respective juniors got promotion. (Infact even the respondent No.3 ^{is sued for conducting} ~~are~~ to the same effect).

M.A.809/92 and O.A.317/91 are ordered accordingly. No costs.

P. J. Thiruvengadam

(P.T. THIRUVENGADAM)
Member (Admn.)

V. Neeladri Rao

(V. NEELADRI RAO)
Vice-Chairman

Dated: 6th July, 1993

(Dictated in Open Court)

Deputy Registrar

- To sd
1. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
 2. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
 3. The Divisional Railway Manager (D) S.C.Rly, Broad Gauge, Secunderabad.
 4. One copy to Mr. P. V. S. S. Rama Rao, Advocate, 5-9-22/37 Adarshnagar, Hyderabad.
 5. One copy to Mr. D. Gopal Rao, SC for Rlys. CAT. Hyd.
 6. One copy to Library, CAT. Hyd.
 7. One spare copy.

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6th July 1993
P. J. Thiruvengadam