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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.443/94

date of decision : 23-2-1994

Between

B. Moses

: Applicant

and

1. The Chief Personnel Officer
South Central Railway
Secunderabad

2. The Divisional Railway Manager
Secunderabad Division (Broad Gauge)
South Central Railway
Secunderabad

: Respondents

Counsel for the applicant

: P. Krishna Reddy,
Advocate

Counsel for the respondents

: N.V. Ramana,
SC for Central Government

CORAM :

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. R. RANGARAJAN, MEMBER (ADMINISTRATION)

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O.A.NO.443/91

JUDGMENT

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

Heard Shri P.Krishna Reddy, learned counsel for the applicant and Shri N.V.Ramana, learned standing counsel for the respondents.

2. The applicant herein was regularly appointed as Gangman in 1967 in the unit of the Permanent Way Inspector (PWI), Waltair, South Eastern Railway. He was transferred to the construction line under the Divisional Engineer (Construction), South Central Railway, Secunderabad in 1970 and thereafter he was promoted as Gangmate. In 1971 he was promoted as Maistry (PWM) and he got further promotion as PWI Grade-III on 12.10.1977 on adhoc basis in the construction line.

3. There was bifurcation of Secunderabad (Broad Gauge) and the Hyderabad (Metre Gauge) in 1976 and earlier to that both of them formed a part of single division styled as Secunderabad division.

4. When 80 posts of PWM had fallen vacant in Secunderabad division in 1982, a notification dated 15.6.1982 was issued calling for applications from Keymen, Gangmates and Gangmen. It was made clear therein that preference would be given to Gangmates and Keymen and when sufficient number of candidates from those categories were not available the case of the Gangmen also would be considered. In the said selection, Shri Chellappan Pillai, a Gangman, by the time he had come from regular line in Hubli division to the construction line under the Divisional Engineer (Construction

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South Central Railway, was declared selected for promotion to the post of PWM in Secunderabad Division.

5. Another notification dated 31.12.1982 was issued calling for applications from the Gangmen and the absentees in the earlier selection for promotion to the posts of PWM. A further notification dated 13.10.1983 was issued limiting the said selection only to the Keymen and the Gangmates. When the applicant and others similarly situated employees in the construction division made a representation requesting the 2nd respondent to allow them to appear for the said examination, the applicant was permitted to appear for the same by the letter dated 11.11.1983. After the written test and the viva-voce, seven out of 80 candidates were declared as selected to the post of PWM in the Secunderabad division and the applicant was one of those seven. But his name was ^{deleted} ~~considered~~ from the panel dated 13.4.1984 by the proceedings dated 3.5.1984 of the 2nd respondent. Then the applicant preferred an appeal against this letter. ^{the same} But when the fresh notification dated 11.5.1984 was issued for holding fresh selection for the post of PWM in Secunderabad division even before the disposal of the appeal of the applicant, he filed Writ Petition No.13953/84 on the file of the Andhra Pradesh High Court praying for a direction to the respondents to select him to the post of PWM without insisting upon fresh selection. As per the interim order in the writ petition, the applicant was permitted to appear in pursuance of the notification dated 11.5.1984 without prejudice to his contentions in the writ petition. But

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When the applicant was not permitted to appear for the concerned examination, he filed WPMP 2446/85 praying for a direction to the respondents to allow him to appear for the examination. Then by the order dated 1.3.1985, the High Court directed the respondents to allow the applicant to appear for the supplementary examination to be held on 4.3.1985. Then he also appeared for the viva-voce. But his result was not declared.

6. The Writ Petition No.13953/84 was transferred to this Bench and registered as T.A.No.796/86. Thereⁱⁿafter it was represented for the respondents that the applicant was having lien only in Hyderabad division and hence his case could not be considered for promotion to the post of PWM in the Secunderabad Division. Then it was submitted for the applicant that his case may be considered by retaining him in the Secunderabad (BG) Division. The said TA was disposed of by observing that if so desired, the applicant may make a representation for his retention in the Secunderabad Division. Then the applicant made a request to that effect. But the said representation was not disposed of. Then this OA was filed praying for a declaration that the action of the 1st respondent in not disposing of his representation, is illegal and to direct the respondents to treat the services of the applicant as PWM on regular basis in the Secunderabad (BG) division with effect from 13.4.1984 as he was duly selected as PWM and to direct the respondents to give him all the consequential benefits.

7. The short point which arises for consideration is as to whether the applicant was eligible for consideration for the post of PWM in Secunderabad division, the vacancies ^{for} of which were notified in 1982.

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W.P. 2446/85

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8. The applicant ^{is} ~~was~~ relying upon the letter No.YP/688/P.9, dated 5.2.1982 of the D^{RM} (P), Hyderabad to contend ^{unit} that all those who were working in the construction ^{under} the Divisional Engineer, Secunderabad ^{should} ~~would~~ be given option either to come within the Secunderabad Division or Hyderabad Division and as the applicant was not given any notice to exercise the said option and when he was ~~xxx~~ permitted to appear for the examination for consideration for promotion to the post of PWM in Secunderabad Division in 1983 as per the letter dated 11.11.1983 of the 2nd respondent, it should be deemed that he exercised option to come into the Secunderabad division and hence the action of the respondents in not promoting him as PWM, Secunderabad Division in the regular line even though he was selected for the said post, is illegal.

9. But the respondents are relying upon the letter No. P(G)228/SC(BG-MG), dated 25.8.1981 which is to the effect the the exercise of option does not arise when the entire seniority unit was allotted to one or the other division and when it is not a case of bifurcation of that seniority unit. On the basis of the said letter, it was urged for the respondents that the applicant belongs ^{ad} to the seniority unit of Kacheguda ¹ by the time he was transferred to the construction unit in 1970 and as Kacheguda division was not bifurcated and when that entire unit was kept in Hyderabad division, the question of giving option to the employees in that unit to go ~~out~~ to Secunderabad division does not arise. Thereby it is urged that the applicant was not eligible for the vacancy in Secunderabad division as he is having lien in Hyderabad division.

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10. But the learned counsel for the applicant relied upon the case of Shri Chellappan Pillai who had come as Gangman from Hubli division to the construction unit of Secunderabad and who was ~~promoted~~ permitted to exercise option to come to Secunderabad division and who was actually promoted on being selected to the post of PWM in Secunderabad division. On that basis, this Bench held in TA 901/86 (W.P.No.2863/85) that Shri V.Venkataswamy, the first petitioner therein who was having lien in Mahaboobnagar unit which was retained in the Hyderabad division should also be given option to come over to Secunderabad Division as he was transferred to the construction unit of Secunderabad division before 1982 and as he was working in the construction unit, Secunderabad by the date of notification issued in 1982.

11. It can be stated that the applicant herein is similarly situated as Shri V.Venkataswamy, the first applicant in TA 901/86 for, ~~that~~ the Kacheguda unit and the Mahaboobnagar unit, in the regular line from which these two had come respectively to the construction unit, Secunderabad before 1982 were not bifurcated and they were allotted to Hyderabad division. ~~If the~~ ^{the} contention for the respondents ~~is that~~ when the entire unit was allotted to Hyderabad/Secunderabad division, the employees in the said unit should not be allowed to exercise option to come to the other division, ~~it~~ would equally apply to Shri V.Venkataswamy. But this Bench by the order dated 25.7.1991 in TA 901/86 held that Shri V.Venkataswamy should be given the option to go to Secunderabad division.

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To

1. The Chief Personnel Officer S.C.Rly, Secunderabad.
2. The Divisional Railway Manager,
Secunderabad Division(Broad Gauge)
S.C.Rly, Secunderabad.
3. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
4. One copy to Mr.N.v.Ramana, SC for Rlys, CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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PS 10
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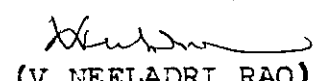
12. As no other case in regard to the similarly situated persons is ^{pending} ~~finding~~ on the file of this Bench, we feel it not ^{or} ~~the~~ case to ~~re~~consider as to whether they should not be given option to go to Secunderabad division in view of the circular dated 25.8.1981, and it is proper to ^{allow} ~~give~~ the ~~benefit~~ ^{to have} to the applicant herein the same benefit which was given to the 1st applicant in TA 901/86, especially when it will ~~not~~ be just and proper to reject the cases of similarly situated persons if they choose to approach ~~XXXXXX~~ now, on the ground of laches.

13. Hence in the circumstances it has to be held that the applicant ~~may~~ made a request for opting for Secunderabad division when he made a representation in 1983 to the 2nd respondent and when he was permitted to appear for the relevant examination by the 2nd respondent by the letter dated 11.11.1983.

14. The case of the applicant has to be considered on the basis of his performance in the written test as per the supplementary examination held on 4.3.1985 and the subsequent viva-voce examination. If that record is not available, the applicant should be deemed to have been selected on the basis of the said examination and placed at the bottom of the panel prepared in regard to the candidates who applied for that supplementary examination held on 4.3.1985 (we feel that it is just and proper to pass this order ^{alternatively} as in fact the applicant was one of the seven out of 80 candidates selected as per the order dated 13.4.1984.).

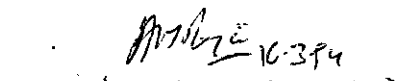
15. The OA is ordered accordingly. Nox costs.


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 23rd February, 1994.
Open court dictation.

vsn


Deputy Registrar (De)

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

AND

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

AND

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

AND

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

Dated: 23-2-1994.

ORDER/JUDGMENT:

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

in

O.A.No.

T.A.No.

Admitted and Interim Direction
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

