

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.503/91.

Date of Judgement : 16.9.94

1. T.Rangababu
2. K.Ashok Kumar
3. S.G.Vincent
4. V.Narasimhamurty
5. B.Kurma Rao
6. A.Subrahmanyam
7. G.Dalareddy

.. Applicants

Vs.

1. The General Manager,
S.E.Railway/GRC,
Calcutta-43.
2. The Chief Personnel Officer,
S.E.Railway/GRC,
Calcutta-43.
3. The Divl. Personnel Officer,
S.E.Railway, Waltair.
4. L.Vijayalaxmi,
(Sr. Typist)
O/o DPO,
S.E.Railway, Waltair.
5. S.V.Ratnam,
Sr. Typist,
O/o Sr. DME,
S.E.Railway, Waltair.
6. D.Rajeswara Rao,
Sr. Typist,
O/o F.A. & C.A.O. (Con),
S.E.Railway, Waltair.
7. G.Padmavathi,
Sr. Typist,
O/o Sr. DOS,
S.E.Railway, Waltair.
8. A.P.V.N.Murty,
Jr. Steno,
O/o Sr. DEN,
S.E.Railway, Waltair.
9. B.Laxmi,
Sr. Typist,
O/o Sr. DPO,
S.E.Railway, Waltair.

.. Respondents

Counsel for the Applicants:: Shri G.Parameswara Rao for
Miss N.Shakti

Counsel for the Respondents: Shri N.R.Devaraj,
SC for Railways

C O R A M

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

Hon'ble Shri A.B.Gorthi : Member(A)

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member(A)]

The relief claimed by all the Applicants herein is for quashing the provisional seniority list of Junior Typists published on 29.1.88 and for a declaration that the Applicants are entitled to reckon their seniority from the date of their adhoc appointment as Junior Typists.

2. The Applicants were initially appointed as Class IV employees in S.E.Railway, Waltair Division and promoted as Junior Typists on 2.5.75 after they were declared successful in the written test and viva-voce. Later, in 1981, they were again subjected to written test and viva-voce and were then regularised in the grade of Junior Typists w.e.f. 22.2.82. While regularising the Applicants, ^{in the seniority list &} as they were placed below Respondents No.4, 7 and 9, who were directly recruited much after the initial date of promotion of the Applicants. Similarly Respondents No.5, 6 and 8, who came to Waltair Division on their own request and who have been given bottom seniority were also placed above the Applicants.

3. Aggrieved by the alleged improper fixation of seniority, the Applicants filed O.A.No.763/88 which was disposed of on 7.12.88 with a direction that the Applicants should submit a representation to the concerned authority and that the same should be

duly considered by the latter. The Applicants preferred a representation on 20.12.88, but there was no reply.

4. In the reply affidavit of the official Respondents it is clarified that as there were a large number of ~~vacancies~~ in the ~~vacancies~~ 66 $\frac{2}{3}$ %, the Applicants were given adhoc promotion as Junior Typists. The Applicants gave a written undertaking that they would not claim seniority on the basis of their adhoc promotion. As per the Respondents, the adhoc promotion of the Applicants was purely as a stop-gap measure till the appointment of direct recruits. Accordingly the Respondents declined the request of the Applicants for seniority w.e.f. the date of adhoc promotion. As the Applicants were regularised in 1982 as soon as vacancies in the quota for departmental promotees were available, their seniority was fixed from the date of regularisation. The private Respondents (No.4, 7 and 9) were regularly appointed against the quota for direct recruits prior to the Applicants and as such were shown above Applicants in the seniority list of Junior Typists. As regards Respondents No.5, 6 and 8, who were also direct recruits, they were transferred to Waltair Division, with the approval of the competent authority, against the vacancies in the Direct Recruits' quota. Hence it was decided to maintain their seniority and not bring it to the bottom of the list.

5. The adhoc promotion of the Applicants was evidently against regular posts, but the vacancies were those falling in the quota for direct recruits.

The Applicants were made aware of the position that their promotion was not in their quota and that it was entirely fortuitous and as a stop-gap measure, which would not reckon for seniority.

6. It is only in certain exceptional cases that adhoc service in a promotional post would count for seniority in that post. In Rajbir Singh & Ors. Vs. Union of India & Ors., AIR 1991 SC 518, which was relied upon by the learned counsel for the Applicants, the Hon'ble Supreme Court was dealing with such an exceptional case. Even in that case, it was reiterated that "appointment against a purely temporary, adhoc or fortuitous post would not entitle the holder of the post to get the benefit of the period of such adhoc or fortuitous service" for seniority. In the case before us, it was categorically brought out that the Applicants were given adhoc promotion against the direct recruits' quota as there were no vacancies in the quota for departmental promotees. Such a fortuitous circumstance was not there in Rajbir Singh's case.

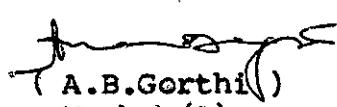
7. Another aspect of the case, which we cannot gloss over, is that the grievance of the Applicants arose consequent to their regularisation w.e.f. 22.2.82 vide memo dt. 2.3.82. Based on the date of regularisation, the seniority of the Applicants was determined by the Respondents. It would not be proper at this belated stage to upset the seniority position that existed and was followed for over 10 years, particularly when the Applicants first took about 6 years before approaching

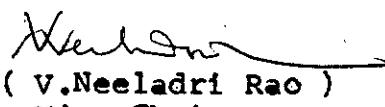
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the Tribunal in 1988 and then, even though their representation dt. 20.12.88 remained unanswered, waited till April, 1991 before approaching the Tribunal again with the present O.A. /

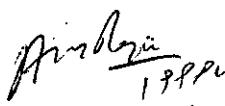
which is hereby dismissed. No costs. /


A.B.Gorthi
Member (A).


(V.Neeladri Rao)
Vice-Chairman.

Dated: 16 Sept., 1994.

br.


Dy. Registrar (Jud1)

Copy to:-

1. The General Manager, S.E.Railways/GRC, Calcutta-43.
2. The Chief Personnel Officer, S.E.Railways/GRC, Calcutta-43.
3. The Divisional Personnel Officer, S.E.Railways, Waltair.
4. One copy to Mr.G.Parameswara Rao, for M Advocate, CAT, Hyd.
5. One copy to Mr.N.R.Devaraj, SC for Railways, CAT, Hyderabad.
6. One copy to Library, CAT, Hyd.
7. One spare.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

Mr. A. B. Goorthi
THE HON'BLE M.R.RANGARAJAN : M.R.DON

DATED: 16.9.94

ORDER/JUDGMENT

M.A.No./R.A/C.A.No. →

O.A.No. 503/9/

←(T.A.No.)

→(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

pvm

