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IN THE CENTRAL ADMINISTRATION TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.866/91

decided on : 15-12-94

Between

R. Sivaram

: Applicant

and

1. Union of India, rep. by
General Manager,
SC Rly, Rail Nilayam
Secunderabad

2. Chief Personnel Officer
SC Rly, Rail Nilayam
Secunderabad

: Respondents

Counsel for the applicant

: G. Ramachandra Rao
Advocate

Counsel for the respondents

: V. Bhimanna, SC for Railways

CORAM

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

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

(72)

OA 866/91

J U D G E M E N T

(as per Shri Justice V.Neeladri Rao, Vice-Chairman)

The applicant was directly recruited by the Railway Service Commission for appointment to the post of Electrical Signal Maintainer Grade-A. By order dated 21-2-69 he was appointed as Apprentice Electrical Signal Maintainer Grade-A. After completion of training the services of the applicant were regularised as Electrical Signal Maintainer Grade-A on 21-11-69. Notification dated 28-2-72 was issued by Respondent No.2 proposing to hold suitability test for the purpose of promotion to the post of Assistant Signal Inspector Grade-III (for short ASI Gr.III). But the name of the applicant was not included in the list of eligible candidates to appear for the said test. But by notification ~~dated~~ No.P.282/SG/ASIs dt. 30-5-72 issued by R2, 15 employees including the applicant herein were asked to appear for written test followed by viva voce test on 19-6-72 to consider their suitability for promotion to the post of ASI Gr.III. The applicant was successful in the said test. He was empanelled as per the list published on 5-9-72 for the post of ASI Gr.III.

2. But the name of the applicant was deleted from the said panel by order dated 23-2-73. It is stated for the respondents that as the applicant had not completed 3 years of service in the category of Electrical Signal Maintainer Gr.A by the date of consideration for suitability test for promotion

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to the post of ASI Gr.III, the name of the applicant was deleted from the panel. But the applicant was sent for pre-promotional training on 7-7-76 and he completed the said training on 6-11-76. After the said training the applicant was regularly promoted ~~in~~ as ASI Gr.III on 6-11-76. The applicant worked as ASI Gr.III in Sholapur Division till he was transferred to Secunderabad Division as per order dt. 2-9-77. The applicant submitted representation when his ^{provisional} name was not shown in the seniority list of ASIs Gr.III published in 1978. Then by order dated 12-9-79 it was declared that the applicant was deemed to have been empanelled as ASI Gr.III as on 21-11-72 the date on which he completed three years of service as Electrical Signal Maintainer Gr.A. Proceedings dated 17-12-79 were issued by R2 by interpolating the name of the applicant at Sl.No.158-C ^{provisional} in the seniority list published on 14-6-78.

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

4. Fourteen candidates were selected in 1973 by way of direct recruitment to the post of ASI Gr.III. They were sent for two years training on 26-7-73. After they completed the training on 25-7-75,

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they were regularly appointed on 27-1-76 as ASIs Gr.III. The promotees who were empanelled on 5-9-72 which was modified by proceedings dated 23-2-73 were sent for 4 months training on 23-7-75 and on completion of training the promotees were given regular promotions as ASIs Gr.III on 11-2-76. But some of those promotees were given adhoc promotion as ASI Gr.III even in 1973 and some of them including Shri Maichel Christi were continued as adhoc promotee ASIs Gr.III by the date they were sent for training while some of the other promotees including Shri A.Venkateswara Rao were reverted by the date they were sent for training.

5. In the provisional seniority list of ASIs Gr.III which was published on 14-6-78 the promotees who were originally empanelled in 1972 which was modified (for short 1973 promotees) in 1973/were shown above the direct recruits/selected in 1973. After considering the objections, the provisional seniority list dated 14-6-78 was made final and the same was published on 17-12-79. All the direct recruits and the promotees were promoted as Signal Inspectors Grade-II on the same day i.e. 17-10-1983. But in the seniority list of ^{Assistant}Signal Inspectors Grade-III published on 5-4-84, the 1973 promotees were shown below the 1973 direct recruits. When the promotees raised ~~obj~~ protests the seniority list was revised wherein the 1973 promotees were again placed above 1973 direct recruits and that seniority list was published on 27-10-84. Thereupon the direct recruits/^{again}raised objections by contending that as their regular appointment was earlier to the regular promotion of the promotees, they have to be shown as seniors

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to the 1973 promotees. That seniority list was again revised on 16-11-90 wherein the 1973 promotees including Shri Maichel Christi who were working as ASI Gr. III were sent for training, by the time they / were shown above 1973 direct recruits and the remaining 1973 promotees including Shri A.Venkateswara Rao and the applicant herein were shown as juniors to direct recruits.

6. Thereupon Shri A.Venkateswara Rao filed O.A. 77/91 praying for restoration of his place in the seniority list as per the final seniority list published on 17-12-79. The applicant herein filed this O.A. claiming similar relief.

7. As there is quota for direct recruits and the promotees to the post of ASI Grade-III, para 302 of the Indian Railway Establishment Manual (IREM) is attracted. It is contended for the respondents that as the dates of regular appointment of the direct recruits are earlier to the dates of the regular promotion of the promotees and as para 302 of IREM lays down that the date of entry into service has to be taken into consideration for determination of inter-se seniority of promotees and direct recruits the direct recruits were shown above the promotees in the impugned seniority list dated 16-11-90. It is further stated by the respondents that as some of the 1973 promotees including Shri Maichel were promoted as ASI Gr. III long before the regular appointment of direct recruits and as they continued in the said adhoc posts by the date they were sent

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 for training and they were regularly promoted on
 successful completion of training, their seniority
 was reckoned from the dates of their ^{ad hoc} promotions
 and hence their dates of entry were earlier to the
 dates of entry of the direct recruits and accordingly
 they were shown as seniors to direct recruits.

8. But the contentions for the applicant herein
 and the applicant in OA 77/91 and other 1973 promo-
 tees who were shown below the 1973 direct recruits
 as per the impugned seniority list are two fold:
 (i) Para 306 of IREM states that candidates selected
 for appointment at an earlier selection shall be
 senior to those selected later irrespective of the
 dates of posting except in the case covered by
 paragraph 305 of IREM. As these promotees were
 empanelled in 1972 and the modified proceedings
 issued on 23-2-73 were by way of deletion of some
 of the names and as it is not a case of addition
 of any names in the panel, it has to be held that
 they were selected earlier to the date of selection
 of the direct recruits and accordingly they were
 rightly shown as seniors to 1973 direct recruits
 in the final seniority list dated 17-12-79.
 (ii) The training for promotees to ASI Gr.III was
 arranged at I.R.I.S.E.T. that imparts special train-
 ing not only to the railway employees of various
 zones in the country, but also ^{to} the employees of
 neighbouring countries. Due to that reason the
 institute has to plan and arrange the training
 programme in such a manner as to cater to all the
 zonal railways and other countries. The employees

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of S.C.Railway could be sent to that Institute for training as and when their turn comes. There was thus delay in sending the 1973 promotees for training which is pre-promotional. The promotees should not be made to suffer due to the delay in sending them for training. If they were sent for training shortly after they were empanelled just as the direct recruits were sent for training shortly after their selection, they would have been given regular promotions long before the date of regular appointment of the direct recruits. Keeping the same in view they were rightly shown as seniors to the direct recruits in the final seniority list published on 17-12-79.

9. Para 302 of IREM envisages that the inter-se seniority of direct recruits and promotees has to be determined on the basis of entry into service, that is the date of regular appointment/promotion. If the regular appointment/promotion is being^{done} in a systematic way, then no undue prejudice would cause either to direct recruit or the promotee. But when vacancies were available for a particular source and when selection was made in time and when the candidates were sent for pre-promotional training, the question as to whether the candidates selected from that source should be deprived of their seniority which they would have got, when there was inordinate delay in sending them for

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training. The training for the promotees was for
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four months only. ~~in~~ the modified panel in regard
to the promotees ~~was~~ was published on 23-2-73. If
they were sent soon for training without any delay
they would have completed the training ~~even~~ in 1973
itself. It is true that the training institute
caters to the employees from the various railway
zones besides from other countries and it has to
necessarily fix up a programme resulting in delay
in sending the promotees to training. Thereby
it can be stated that the delay was not motivated.
But at the same time in interpreting para 302 the
delay in sending the promotees for training has
to be kept in view.

10. While disposing O.A. 77/91 we felt a doubt
as to whether para 306 of IREM is applicable when
the periods for training from different sources
are varying. But as we had ~~held~~ held therein that
on the ground of equity it is just and proper to
take into consideration the inordinate delay in
sending the promotees for training. We felt that
if direct recruits were selected for earlier
vacancies and if promotees were selected for
later vacancies and as the period intervening
between the dates of selection of direct recruits
the vacancies ~~for which they are recruited~~ are relevant. So we
and promotees is not considerable ~~we~~ directed the
respondents to produce the relevant record which
indicates the vacancies for each year for which
the direct recruitment and promotions were resorted to.

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It was stated by Shri K.K.Babu of CPO's office, SC Rly., Secunderabad who was present during the consideration of OA 77/91 that he searched for the relevant records in the office and he could not trace them and informed the officers to that effect. Hence we ultimately held in order dated 14-11-94 in OA 77/91 that though the competent authority can correct a mistake, there was no such mistake which compelled them to correct the seniority list dated 17-12-79 in regard to the applicant therein and accordingly we directed the respondents to restore his seniority as per seniority list dated 17-12-79. Thus the direction was that the applicant therein who was a promotee should be shown above the 1973 direct recruits and the representations of the direct recruits ^a ~~of~~ decade thereafter should have been rejected on the ground of laches.

11. The learned counsel for the applicant herein who was also the learned counsel for the applicant in OA 77/91 contended as under:

(i) The name of the applicant herein was shown above Shri A.Venkateswara Rao, the applicant in OA 77/91 in the panel that was published on 5-9-72. As such the applicant herein should be shown as senior to the applicant in OA 77/91 in the seniority list of ASIs Gr.III. As the name of the applicant in OA 77/91 has to be shown above the 1973 direct recruits

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consequent upon the judgement dated 14-11-94 in OA 77/91, direction has to be given for maintaining the place of the applicant herein as per seniority list published on 17-12-79.

(ii) There is no bar for consideration for promotion even before the completion of eligibility period and if one is empanelled he has to be given promotion on completion of eligibility period. As the applicant completed three years of service in the post of Electrical Signal Maintainer Gr.A by 21-11-72, proceedings were issued by giving him seniority with effect from 13-3-74, that is the date on which he was promoted as ASI Gr.III and the deletion of the applicant's name from the panel as per proceedings dated 23-2-73 is erroneous.

(iii) It is open to the General Manager to ^{as per para 11.14 IREM} relax the relevant rule and as the applicant was permitted to appear for the suitability test and as he was empanelled and especially when he got sufficiently higher ranking, relaxation should be given in regard to the same.

12. It is not in controversy that the applicant had not completed three years of service in the lower cadre i.e. Electrical Signal Maintainer Gr.A even by the date the written test was held for the suitability test (the applicant was regularly appointed as Electrical Signal Maintainer Gr.A on 21-11-69. The notification dated 28-2-72 was originally issued for alerting the eligible candidates for suitability test wherein the name of the applicant was not included. His name was included

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only in the notification dated 30-5-72 in regard to the candidates who were asked to appear for the written test. The written test was followed by viva voce, was held on 19-6-72. His empanelment was on 5-9-72). It is stated for the respondents that no record was available to show that relaxation was given to the applicant so as to enable him to appear for suitability test even though he had not completed three years of service in the lower cadre by the relevant date. Though the learned counsel for the applicant had taken time to produce the relevant document in regard to relaxation, the same was not produced. It may be noted that while the name of the applicant was deleted from the panel as early as on 23-2-73 on the ground that he was not eligible for consideration, ~~it is~~ only on the basis of his representation a proceeding was issued in 1979 to consider his seniority from 13-2-74 the date on which he was promoted as ASI Gr.III on adhoc basis. But we feel that if in fact any relaxation was given in regard to the applicant, his name would not have been deleted on 23-2-73 ^{within} which is less than five months after his name was empanelled in September 1972. Further if there was any order of relaxation, the applicant would have referred to it in the representations made after his name was deleted from the panel by proceedings dated 23-2-73. As no document was filed in support of it, it can be reasonably presumed that there was no order of relaxation and accordingly it was not referred to in any of his representations.

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13. The promotion from the post of Electrical Signal Maintainer Gr.A to the post of ASI Gr.III is by way of selection. The eligibility for consideration for the said promotion is three years in the lower grade by the date of the issual of notification for promotion. The learned counsel for the applicant had not drawn our attention to any provision which enables a candidate to appear for the suitability test for consideration for promotion even when he was not having eligibility period.

14. Para 214 (C) ~~xxxxxxx~~ I.R.E.M. envisages that staff in the immediately lower grade with a minimum of two years service in that grade will only be eligible for promotion. It further states that the condition of ~~two~~ years of service would stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration. Para 214 is in regard to promotion on the basis of seniority. The same cannot be extended in regard to promotion by selection on merit. There is thus no force in the contention for the applicant that even though he had not completed three years of service in the lower grade by the date of consideration for promotion, he ~~would~~ be considered, ~~even~~ though the promotion could be given on completion of eligibility period.

15. When the promotion is from more than two sources the date of entry into service is also relevant for determination of inter-se seniority. If relaxation is going to be directed in the case of the applicant then the date of entry ~~into service~~ of the applicant into ASI Gr.III has to be advanced whereby he would

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become senior to the 1973 direct recruits while as per present date of entry he is junior to the 1973 direct recruits which naturally causes prejudice to the 1973 direct recruits. It is evident that the applicant herein was not eligible for consideration in February 1972 or even by September 1972, the date on which the panel was prepared. He could have been naturally considered at the time of next selection. It is not known as to when the next selection was held. But his promotion as ASI Gr.III was regularised on 6-11-76 the date on which he completed the pre-promotional training. The direct recruits were regularly appointed on 27-1-76 on completion of two years of training. It cannot be stated that there were administrative delays which caused delay in regard to the promotion of the applicant. Thus we feel that it is not a case where a direction has to be given to the competent authority to relax the rule even if there is a power to relax, so as to regularise the empanelment of the applicant in September 1972.


16. As already referred, the challenge in this O.A. and also in OA 77/91 is in regard to the seniority list dated 16-11-90 and the claim is that they have to be given the rankings in the seniority list as per the list ~~dated~~ published on 17-12-79. When some of the relevant facts are not available as per pleadings in O.A. 77/91, the relevant material was supplied during the course of arguments in OA 77/91. As the said material was relevant for consideration of this

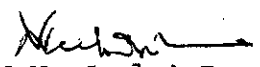
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O.A. also and as the learned counsel for the applicants in both the O.As. is one and the same we referred to that material even in this O.A. even though it was not referred to in the pleadings in this O.A.

17. In the result the O.A. is dismissed. No costs./


(R. Rangarajan)
Member/Admn.


(V. Neeladri Rao)
Vice-Chairman

Dated: the 15th day of December, 1994.

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Deputy Registrar(J)CC

To

1. The General Manager, Union of India,
S.C.Rly. 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.V.Bhimanna, SC for Rlys, CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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