

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.1006/91

decided on : 9-12-94

M. Satyanarayana

: Applicant

Versus

1. Divnl. Rly. Manager (MG)
South Central Railway
Hyderabad
Secunderabad

2. Sr. Divnl. Personnel Officer(MG)
SC Rly., Hyderabad, Secunderabad

3. Nagaiah
Diesel Asstt., SC Rly.
O/o Loco Foreman, Purna
Maharashtra State

4. Veera Swamy
Diesel Asstt. SC Rly.
O/o Loco Foreman, Purna
Maharashtra State

: Respondents

Counsel for the applicants

: S. Lakshma Reddy,
Advocate

Counsel for the respondents

: N.V. Ramana, SC for Railways

CORAM

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

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

(28)

Date: 9/12/84

O.A.No.1006/91.


J U D G M E N T


X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

The applicant joined as a Y.K.C. directly on 3.10.1974 and he acquired S.S.L.C. qualification in 1979. In the screening held for Y.K.Cs./S.K.Cs. to be empanelled for Fireman 'C', it is stated by him that he was found suitable and orders were issued vide order dt. 28.12.1983 promoting him as Fireman 'C', along with several other employees. It is stated for the applicant that he refused promotion due to some other domestic problem. It is further stated by him that he was not promoted after a lapse of one year from 28.12.1983 when the refusal period was over on 28.12.1984. It is alleged by him that though number of his juniors were promoted as Fireman 'C' through proceedings No.YP/563/P/11/I/MG dt. 14.10.1985, he was not promoted inspite of his representations.

2. R-1 issued a seniority list of Khalasis on 3.11.1988 in which, the applicant's name was not found. He represented the same to R-2 on 21.11.1988 and also requested R-2 to correct the seniority list by assigning his rank on the basis of his date of appointment as on 3.10.1974. It is further alleged by him that a number of his juniors were promoted to Fireman 'C' category by proceedings of R-1 dt. 10.5.1989 with retrospective effect from 28.12.1983. He once again submitted another representation dt. 1.12.1990 requesting the respondents to promote him as Fireman 'C' and also to send him for Diesel Assistant Training as his juniors were

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already promoted as Diesel Assistants in the year 1990.

further

3. It is/alleged by the applicant that R-3 and R-4 who were juniors to him were promoted from 28.12.1983. He further states that his seniority should be fixed in between one Shri Ch.Vittal and one Shri G.K.Tirunathaswamy.

4. In view of the foregoing facts and circumstances, the applicant has filed this application praying for a direction to fix his seniority as Senior to respondents 3 & 4 and for a further direction to promote him as Fireman 'C' and further to the post of Diesel Assistant on par with his juniors viz. R-3 and R-4 with all consequential benefits.

5. The respondents in their reply affidavit do not dispute the fact that he was screened for the post of Engine Cleaners and promoted as Fireman Grade 'C' in the scale of Rs.210-270 and posted him at Nizamabad itself vide office order No.95/ELR/Mech. dt. 28.12.1983. As the applicant never carried out his promotion for a prolonged period, it was taken as unwillingness to work as Fireman 'C' and hence the principle of further promoting him after one year does not arise in his case. They also deny of having received any representation from the applicant.

6. The reply affidavit is silent in regard to any promotion made to the post of Fireman 'C' through the proceedings dt. 14.10.1985. However, the respondents state that his name in the seniority list published on 3.11.1988 in pursuance of the directions given by this Tribunal in O.A.No.106/87 was inadvertantly left out and this error was corrected by issuing a correction list dt.16.1.1990 to the original seniority list duly interpolating his name in the said seniority list. They further admit that due to the revision of the seniority as indicated above, some of the employees who were junior in the earlier seniority list

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became seniors. Under such circumstances, some of the employees who were empanelled for the post of Engine Cleaners, had to be promoted as Fireman Grade 'C' since their juniors were already promoted. Such of the employees were only promoted during the years 1987, 1988, and 1989. Since the applicant has become junior in view of the revision of seniority, promoting him along with erstwhile juniors does not arise.

7. The main issue for consideration is whether the applicant has been denied promotion as Fireman 'C' after the refusal period is over on 28.12.1984. Whether any of his juniors have been promoted overlooking him for promotion as Fireman 'C'.

3. The applicant though promoted vide proceedings dt. 28.12.1983 to the category of Fireman 'C', it is an admitted fact that he refused promotion due to domestic problem. As per para-224 of I.R.E.M. the Railway servant who was empanelled for promotion and refused promotion has to be promoted only after a lapse of one year. His seniority on promotion after the expiry of the refusal period will be below the seniority of those already promoted in that panel. If there is no vacancy immediately after the expiry of the refusal period, his name should be considered first before considering others in the panel for vacancies that will arise during the currency of the panel. If the currency expires he loses his chance. Currency of the panel in Group 'C' is for the period of two years from the date of approval of the panel by the competent authority as per para-220 of IREM. No material has been brought before us to show that there were vacancies in the category of Fireman 'C' after the expiry of the refusal period i.e. after 28.12.1984 and that he was

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not promoted against those vacancies. The applicant only alleges that his juniors were promoted to Fireman 'C' through proceedings dt. 14.10.1985. But this proceeding is not annexed to the O.A. A-4 Annexure which is indicated as material paper of this proceeding dt. 14.10.1985. ~~this Annexure~~ is a different one. The respondent as stated earlier is silent in the reply regarding the issue of any promotion through the proceedings dt. 14.10.1985. It cannot, therefore, be definitely said in view of the above that there were vacancies after 28.12.1984 i.e. after the expiry of the refusal period of the applicant, who initially refused promotion on 28.12.1983.

9. In view of the revision of seniority of the Khalasis of Mechanical Branch in pursuance of the directions of this Tribunal, in O.A.No.106/87, some of the Khalasis who were juniors in the earlier seniority list became seniors. Such of the Khalasis who became seniors to those who were empanelled as Fireman 'C' in the panel published on 28.12.1983 due to the revision of seniority list published on 3.11.1988 have to be promoted as Fireman 'C'. The applicant should not have any quarrel in promoting them as their promotion was due to the revision of seniority as per the directions of this Tribunal. His seniority position in the seniority list published on 3.11.1988 ^{has} also been duly interpolated as per the correction slip issued on 16.1.1990. If the interpolation of his seniority is wrong, he should have approached the concerned authorities for rectifying the same. The applicant has not stated anything regarding this in his application nor any rejoinder has been filed.

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10. The applicant will have a right for promotion to the post of Fireman 'C' if there is a vacancy after 28.12.1984 and before the expiry of the ^{period of} panel i.e. after a lapse of 1 year from 28.12.1983 when he refused promotion/ and before expiry of two years from the date of approval of panel. But, as explained earlier, the applicant has not produced any material to show that he was not promoted after ^{period of} 28.12.1984 and before the expiry of the/panel against a vacancy which was filled by his junior in the panel. The reply affidavit is also silent in this connection. It is unfortunate that the applicant refused promotion without understanding the implications of the same. It appears that he also failed to represent his case in time to the appropriate authority in 1985. When the panel had expired, he cannot be promoted unless he is empanelled ~~once~~ again. Due to the revision of seniority of Khalasis some of them had to be promoted to Fireman 'C' category as some of the empanelled candidates of 1983 had become junior to them. This cannot be said to be irregular promotion and on that basis the applicant cannot claim his promotion as Fireman 'C'.

11. Under these circumstances, no definite relief can be given to the applicant. As the respondents are also not in a position to assert that there were no vacancies after 28.12.1984 and before the expiry of two years from the date of approval of the panel, the applicant can be given some relief only by way of promotion to the post of Diesel Asst., against direct recruitment quota in future vacancies by giving a direction to consider him for promotion as Diesel Assistant against that quota.

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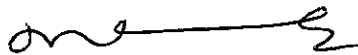
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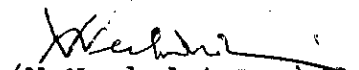
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12. In the result the following direction is given:-


In future, if any indent is going to be placed on the Railway Recruitment Board for recruitment of Diesel Assistants, the applicant should be taken as one of the selected candidates against that recruitment quota without his applying for the same, as he has passed S.S.L.C. and possesses field experience. Upper age relaxation, if necessary, has to be granted. His name should be placed as first in the selected list. He should be sent for training along with the other selected candidates. His seniority after training has to be fixed in accordance with rules ~~for~~ directly recruited Diesel Assistant of that batch.

13. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman.

Dated 9th December, 1994.

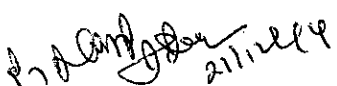

Deputy Registrar (A) CC

Grh.

To

1. The Divisional Railway Manager (MG) S.C. Rly, Hyderabad, Secunderabad.
2. The Sr. Divisional Personnel Officer (MG) S.C. Rly, Hyderabad, Secunderabad.
3. One copy to Mr. S. Lakshma 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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21/12/94

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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. R. RANGARAJAN : M(ADMIN)

DATED: 9-12-1994

ORDER/JUDGEMENT:

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

in

O.A.No.

1006/91

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

No spare copy

