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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1014/91

Date of decision: 28-6-93.

Between

S.Purushothaman

... Applicant

A n d

1. The Government of India, rep. by its Secretary, Ministry of Railways, New Delhi.
2. The General Manager, South Central Railway, Secunderabad.
3. The Chief Personnel Officer, S.C.Rly., Secunderabad.
4. Works Manager, S.C. Railway, Engineering Workshop, Lalaguda, Secunderabad.

... Respondents

Appearance:

For the applicant : Shri G.Bikshapathi, Advocate

For the Respondents : Shri N.V.Ramana, S.C. for Rlys.

CORAM:

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

The Hon'ble Shri P.T.Thiruvengadam, Member (Admn.)

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J U D G E M E N T

(Delivered by Hon'ble Shri Justice V. Neeladri Rao, Vice-Chairman)

The applicant joined service as Tracer in South Central Railway on his being selected by the Railway Service Commission. He was promoted as Assistant Draughtsman on 18-2-83 and was later promoted as Senior Draughtsman on 1-1-84. The Works Manager, Engineering Workshop, Lalaguda, Secunderabad (Respondent-4) issued proceedings in O.O. No.23/A/87 dated 1-8-87 promoting the applicant to officiate temporarily as Head Draughtsman (HDM) against an existing restructuring vacancy. The Chief Personnel Officer, S.C.Rly., Secunderabad (Respondent-3) issued proceedings dated 11-1-91 promoting the applicant and some others as HDM.

2. A notification was issued on 29-4-91 for holding selections for preparing a panel of 38 candidates for promotion to the post of Chief Draughtsman. It is not in controversy that as per recruitment rules, the number of candidates who have to be in zone of consideration for the post of Chief Draughtsman, a selection post, is thrice the number of vacancies. One of the eligibility criteria is that one should be in service in the post of Head Draughtsman for a period of one year. It is stated for the respondents that though 114 (38 x 3) candidates can be considered, 89 candidates only were considered as there were no other candidates who had completed one year of service in the cadre of Head Draughtsman.

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Out of the 89 candidates who were considered, candidates in Sl.Nos.80 to 89 were regularly promoted on 11-1-91, the date on which the applicant was also regularly promoted to the post of HDM. The candidates against Sl.Nos.80 to 87 were promoted on adhoc basis as HDM during the years 1987 and 1988 by the competent authority. The candidates against Sl.Nos.88 and 89 were promoted to the post of HDM by the Chief Administrative Officer (Construction), Head of the Civil Engineering (Construction) Department and the plea of the respondents that the said Chief Administrative Officer is also competent to order promotions as HDM was not disputed. The services of the candidates against Sl.Nos.80 to 89 as HDM on adhoc basis was also taken into consideration for reckoning the period of one year service which is prescribed as one of the conditions for eligibility for promotion as Chief Draughtsman.

3. The period of service of the applicant as Head Draughtsman on adhoc basis was not taken into consideration for reckoning the period of one year service and hence the applicant was not called for selection for promotion to the post of Chief Draughtsman. It is pleaded for the respondents that as the Works Manager who issued proceedings dated 1-8-87 promoting the applicant temporarily as HDM is not competent to promote the applicant to the post of HDM, the said promotion had to be held as illegal and hence the period of service of the applicant as HDM on temporary

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basis prior to 11-1-91 was not taken into consideration and as he was in service for less than four months by 29-4-91 as HDM in pursuance of the orders issued by the competent authority he was not held eligible for consideration for promotion to the post of Chief Draughtsman. It was also stated for the respondents that nine candidates in the cadre of Senior Draughtsman who were senior to the applicant in the said cadre who are not called for selection for the post of Chief Draughtsman as they did not work as HDM even in temporary/officiating or adhoc capacity.

4. Before advertizing to the respective contentions it is necessary to consider as to what are the rights that accrue to an employee on the basis of seniority. If one is qualified for promotion: (i) the employee has to be considered for promotion when his turn comes and his juniors cannot be considered till he is considered for promotion; (ii) the juniors cannot be considered without considering the senior employee even in case of promotion by selection for ~~in~~ such a case, the senior employee alongwith his juniors who were in zone of consideration have to be considered. If a junior is considered ahead of a senior or if juniors are considered without considering the senior, then there is no purpose in giving seniority to an employee. The place in seniority list assumes importance for on that basis the valuable right of promotion in due turn depends.

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5. Keeping in view the above rights of a senior, the point which arises for consideration in this case can be considered. In regard to many posts ^{for} ~~of~~ promotion the minimum period of service in the lower category is prescribed as one of the criteria. Then naturally a question arises as to whether the service in the temporary/officiating or adhoc capacity also had to be taken into consideration in order to determine whether the concerned employee completed the minimum period of service. When the rule is silent in regard to the same, it is just and proper to interpret that even the service rendered in temporary/officiating or adhoc capacity also has to be taken if there is no break in service and if his services are regularised and if thereby he cannot claim any preferential promotion over his seniors. The purpose in fixing the minimum period of service in the lower category for eligibility ^{experienced} for promotion is to have an employee in the promotional post. The experience which one gets in a particular post does not depend upon the question as to whether he is discharging those functions on regular basis or temporary/officiating or adhoc capacity. It is not stated that when the temporary/adhoc service of the candidates against Sl.Nos.80 to 89 was taken for reckoning ^{the} minimum period of service, they are getting the preferential promotion over their seniors.

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Sl.No. 80 to 89

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6. But there are nine seniors to the applicant who had not been promoted even on temporary/adhoc basis. It might be probably on the basis that no vacancy might have arisen in the units in which they are working as Senior Draughtsmen. It is not in controversy that the promotion to the post of HDM is not on unit basis. If the contention for the applicant that the service rendered by him in the officiating or adhoc capacity also had to be taken into consideration for calculating the minimum period of one year of service, is accepted, it will prejudicially affect the interests of his nine seniors for they were not eligible for consideration for promotion to the post of Chief Draughtsman as they had not worked as HDM at all. Any interpretation which prejudicially affects the interests of the seniors for no fault of theirs, cannot be held as just and proper. Even a rule which is in favour of a junior, if thereby he jumps over his seniors to claim promotion, ~~the~~ same has to be struck down as arbitrary and ~~that is~~ thus in violation of the Article 14 of the Constitution. When such is the position even in regard to the rule that is formulated, can it be stated that a rule has to be interpreted in a way whereby a junior has to be considered for promotion even before his senior is considered for promotion, ^{in a case where} ~~for~~ for no fault of the senior he cannot be held as eligible for promotion in accordance with ~~the~~ the rules for promotion. Even if a rule is susceptible of ~~of~~ more than one interpretation, and if the rule has to be held as violative of provisions of the Constitution

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by accepting one interpretation and if the same cannot be held as infringement of the Articles of the Constitution if the other interpretation is followed, the latter interpretation has to be ^{followed} ~~accepted~~. Further it is also now well established that a rule or section also can be read down, if the same can be held as Constitutional by so reading down and if it is in violation of the Constitution by not so reading down. Hence we feel that the contentions for the applicant cannot be accepted for if it is accepted he has to be considered for promotion even before his seniors are considered for promotion ^{as it is a case where} ~~and when~~ for no fault of the seniors, they have to be held as ineligible for consideration for promotion on the basis of the rules.

7. There may be cases where even the junior may be considered for promotion when senior is not eligible for promotion on the ground that he had not passed the requisite test. But such a question had not arisen in this case.

8. The other contentions ~~a~~ that was raised for the respondents is that the period of service of the applicant when he worked in officiating or adhoc capacity cannot be taken into consideration as his temporary promotion was not ordered by competent authority. But we feel that if in fact the temporary promotion of the applicant was made at the time when his turn as per the seniority list had come, then even if it can be held that the competent authority had not passed the order

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7th/8/21

of the temporary promotion, still it can be stated that it has to be taken into consideration as he gained the necessary experience and ^{as} the applicant cannot be faulted if the said order of temporary promotion was passed by an authority who is not competent. Anyhow there is no need to further advert to the same in ^{the} view which we had taken in regard to the other contentions of the applicant. In the result the O.A. is dismissed. No costs.

P. J. Thiruvengadam
(P.T.Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V.Neeladri Rao)
Vice-Chairman

Dated: 28th day of June, 1993.

mhb/

829/6/93
Deputy Registrar (Judl.)

Copy to:-

1. Secretary, Ministry of Railways, Government of India, New Delhi.
2. The General Manager, South Central Railway, Secunderabad.
3. The Chief Personnel Officer, South Central Railway, Sec-bad.
4. Works Manager, South Central Railway, Engineering Workshop, Lallaguda, Secunderabad.
5. One copy to Sri. G.Bikshapathy, advocate, 16-9-749/41, Race course road, Old Malakpet, Hyd.
6. One copy to Sri. N.V.Ramana, SC for Rlys, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V. NEELADRI RAO : V.C.

AND
P. Divya Sankar

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY
: MEMBER (J)

AND

THE HON'BLE MR.

DATED: 24/6/1993

ORDER/JUDGMENT.

5014/91

R.P./C.E./M.A. No.

in

O.A.No. 1014/91

T.A.No. (W.P.No.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs

pvm

Central Administrative Tribunal
DESPATCH
14 JUL 1993
HYDERABAD BENCH.