

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD.
OA.927/92.

Date of order: 30-8-1995.

Between:-

H. Ekhambarappa

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Applicant.

And

1. Union of India, re by General Manager,
South Central Railway, Secunderabad.
2. The Workshop Personnel Officer (W.P.O.),
Carriage repair Shop, Tirupathi.
3. The Dy. Chief Mechanical Engineer,
Carriage Repair Workshop, Tirupathi,
Chittoor Dist.
4. The Chief Personnel Officer,
South Central Railway, Secunderabad.

...

Respondents.

Counsel for the Applicant: Mr. B. Sudhakar Reddy, Advocate.

Counsel for the Respondents: Mr. N. V. Ramana, AGSC.

CORAM:

HON'BLE MR.JUSTICE V.NEELADRI RAO, VICE CHARMAN

HON'BLE SHRI R.RANGARAJAN, MEMBER ADMINISTRATIVE.

O.A.No.927/92.

Date: 30-8-1995.

J U D G M E N T

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

Heard Sri B.Sudhakar Reddy, learned counsel for the applicant and Sri N.V.Ramana, learned Standing Counsel for the respondents.

2. The applicant herein is an Ex-Servicemen and he had applied for the post of Skilled Artisan, which is in Group 'C' category in Tirupathi Workshop, which includes recruitment of Fitters and Allied Trades, when a notification for 196 posts was issued by R-3. 10% of the vacancies notified in Group 'C' posts are reserved against Ex-Servicemen quota. The applicant was selected against this quota and he was placed at Sl.No.114 in the select list. When he did not get appointment on the basis of the empanelment he had filed a petition before the respondents and as no orders were passed on it, he had filed OA No.165/89 on the file of this Bench which was disposed of with a direction to dispose of the petition filed by the applicant within two months.

3. In pursuance of the directions given in OA 165/89 it was informed to the applicant that he was selected against 10% reservation quota for Ex-servicemen and he has to wait for his turn for appointment in open category as no roster has been prepared for the category of Ex-Servicemen. Hence, he had filed another OA bearing O.A.No.487/89 on the file of this Bench for a direction to the respondents to give appointment orders appointing the applicant against 10% of the posts notified for Ex-servicemen. The said OA was disposed of on 1.9.1989 and the operative portion

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of the judgment reads as follows:-

"We would for the reasons given above direct the respondents to implement the circular instructions strictly by appointing the applicant against 10% of the posts filled up in the year 1987 provided this percentage would exceed two posts (since one ex-serviceman with higher rank than the applicant is available and already appointed). If only one vacancy was to arise in 1987, then the applicant should be considered in a vacancy of the year 1988. It is for the Railways to fix the seniority of the applicant by providing roster points as in the case of SCs/STs or by allotting every tenth vacancy as ordered in the Home Ministry's circular dt.23.5.70 or any other rational method which may be devised by them. It is not our function nor within our province to determine these factors. With these directions, the application is allowed."

In obedience to the above direction, the applicant was appointed and he joined duty on 6.3.1990 and he was absorbed in service on 6.12.1990. The respondents, in this connection submit that "the applicant was offered appointment duly treating him against roster point reserved for Ex-Serviceman as directed by this Tribunal though such process is not in existence in Railways". The applicant was taken as Skilled Artisan in the Welders category and the seniority list ^{for that category was} issued vide proceedings No.TR/P.612/Art./Vol.II/Tr./P.529/AVC dt.12.7.1991. It shows that he was placed at S.No.30 in the Welder category Gr.III. The applicant submits that he should have been placed at Sl.No.18 i.e. the 10th place of recruitment of direct recruits as per the direction of this Tribunal and he should also ought to have been given appointment orders with effect from August, 1987. Aggrieved by the above placement at Sl.No.30 in the seniority list, he gave representation dt. 2.7.1991, to refix his seniority at Sl.No.18 instead of 30

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as per the directions of this Tribunal. His representation was replied by R-2 by proceedings dt. 4.1.1992 that is fixed ~~stating his seniority at Sl.No.28 xxxproceedings no.~~ ~~TR/P.612/Art./Vol.II TR/P.529/AVC dt. 12.7.91~~ (page-13 of material papers filed with the OA) on the basis of his merit order obtained by him in aggregate. The applicant alleges that the above reply is in violation of this Tribunal's direction and is not in accordance with the reservation provided for SCs/STs and Ex-Servicemen. His contention is that his providing seniority has to be fixed after/roster points to Ex-Servicemen as is done in the case of SCs/STs or by allotting every tenth vacancy to Ex-Servicemen. The applicant thereafter filed appeal before R-4, and R-4 confirmed the seniority list dt. 12.7.1991 already issued by R-3 in terms of proceedings No.P.612/Mech./CRS/TPYS/22 dt. 22.4.92/19.5.92.

4. The applicant alleges that he should be given seniority against the 10th vacancy as per reservation for Ex-Servicemen as per the directions of this Tribunal and fixing his seniority at Sl.No. 28 instead of at Sl.No.18 and been appointed not showing him having with effect from August, 1987 is incorrect and hence he filed this OA for the following reliefs:-

- "(a) To set aside the seniority list prepared on the basis of merit issued in proceedings No.TR/P.612/Art./Vol.II TR/P.529/AVC dt. 12.7.91 for the category of Skilled Grade-III Welder trade which is finalised by proceedings No.TR/P.612/Art./Vol.III dt.4.1.92 and as confirmed by proceedings of 4th respondent in P.612/Mech/CRS/TPYS/22, dt.22.4.92/19.5.92.
- (b) To refix the seniority of the applicant at Sl.No.18 i.e. before E.^rarthasarathi (1210) and after V.Sridhar Rao (2098).

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- (c) To refix the date of appointment of the applicant i.e. from August 1987 as directed by the Hon'ble Tribunal and give all consequential benefits such as arrears of pay, pay scale from time to time promotion etc. "

5. The main relief asked for in this OA is that the applicant should be shown at Sl.No.18 in the seniority list of Welders instead of 28 as informed to him by R-2 in his Memorandum dt.4.1.1992 bearing No.TR/P.612/Artisan/Vol.III (page-13 of the material papers of OA). As the applicant is entitled for being posted against ^{the} 10% point of the direct recruitees as per the directions of this Tribunal in OA 487/89 disposed of on 1.9.1989. It is further contended by the applicant that he is to be given appointment order with effect from August, 1987 when the orders for selected direct recruit candidates numbering 106 were issued against the notified vacancies.

6. The respondents in their reply statement submit that though there is reservation of 10% of posts in Group 'C' category for Ex-Servicemen quota only 5 Ex-S/men were selected and they were placed in the panel as per the marks obtained in the written examination/viva-voce. This merit is the criterion for sending offer of appointment and fixation of seniority. Though initially he was informed that he should wait for appointment till his turn comes in the panel, order of appointment was issued to him as per the directions of this Tribunal in OA 487/89 appointing him to the post of Skilled Artisan Gr.III and he joined the service on 6.3.1990 followed by absorption on 6.12.1990.


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It is further submitted that the applicant was offered appointment duly treating him against roster point reserved for Ex.S/men as directed by this Tribunal though such process is not in existence in Railways. Communal roster is ^o mandatory to monitor the prescribed percentage of reservation for SC/ST candidates either in recruitment grades or in promotional grades in Railways and it is not related to the question of seniority which would continue to be governed in accordance with the extant rules in this regard. The roster point will not give any advantage to the candidate belonging to the reserved communities as far as seniority is concerned. Seniority of Skilled Artisans selected under direct recruitment quota will be governed by the merit order in the select panel. The provisional seniority of Skilled Artisan category of Mechanical Department published vide Dr.No.TR/P/612/Art/Vol.II dt.3.9.1990 is in conformity with the rules as indicated above. The seniority of the applicant will also be governed by the same rule as per his merit order in the select panel. Hence, he cannot be placed at Sl.No.18.

7. The recruitment in this case is for Skilled Artisans from the open market and this recruitment is as per 100 point roster for recruitment of SC/ST candidates. There is no roster prescribed for against Ex.S/men quota. Only 10% of the vacancies notified are to be filled by Ex.S/men. Even for SC/ST candidates, though roster point is indicated, they will be selected and empanelled as per the marks obtained by them in the selection and they will be given appointment in their turn as per the merit list. The

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merit list should only contain the total number of posts earmarked for SC/ST candidates as per roster. The roster is only to ensure that the number of candidates kept on the select panel is as per the number required to fill the roster points. The communal roster is ~~only the~~ mandatory to ensure that the prescribed percentage of reservation for SC/ST candidates in recruitment or promotion in Railways service ^{is fulfilled} and is in no way related to the question of seniority which would be governed by the extant orders on the subject. The merit order of the selected candidates from the open market is the criterion for fixing the seniority. The judgment in OA 487/89 of this Tribunal clearly states that "it is for the Railways to fix the seniority of the applicant by providing roster points as in the case of SCs/STs or by allotting every tenth vacancy as ordered in the Home Ministry's circular dt. 23.3.1970 or any other rational method which may be devised by them". As stated earlier, providing of roster points for SCs/STs or allotting every tenth vacancy for Ex.S/men is only a way to ensure that prescribed percentage of reservation in recruitment is fulfilled and such roster is in no way related to the question of seniority even for SCs/STs whom clear-cut roster points are given. ^{of} they are empanelled as per their merit order and offer ^{is sent} appointment in accordance with the merit position even if communal roster point comes earlier to their turn. The seniority in that particular category is also decided as per their merit order. Hence, the applicant who was appointed in Railway against Ex.S/men quota cannot claim appointment against this quota as the tenth recruitee of direct recruitees appointed and fixation of seniority accordingly. The judgment of this Tribunal in OA 487/89

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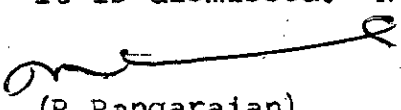
has left the method to fix the seniority to the Railways. It was observed by the Tribunal that a rational method may be adopted to fix the seniority. The ~~rational~~ ^{for fixing seniority,} method adopted in Railway as submitted by the respondents is on the basis of merit order in the select list/ and this method cannot be called as irrational. In view of this, fixing of the seniority on the basis of the merit order for the applicant in no way violates the directions of this Tribunal given in OA 487/89.

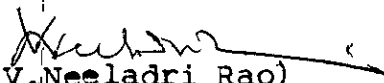
8. The applicant had joined in service on 6.3.1990 and he was absorbed on 6.12.1990. His next contention is that he should be given the seniority from August, 1987 instead of 6.3.1990 as 106 direct recruits were appointed in 1987 itself. As ²⁰ ~~20~~ posts ^{was} earmarked for Ex/Service men quota and as he is the second Ex.Serviceman in that list he is entitled to be appointed in August, 1987 itself against the quota earmarked for Ex.Servicemen. The respondents, in their reply statement had submitted that the merit order is the ~~xxx~~ criterion for sending the offer of appointment and he was offered appointment ^{was} earlier in 1990, in view of the directions of this Tribunal in OA 487/89. Though such process is not in existence in railways. There is a ~~xxx~~ force in the submission of the respondents. The roster is only to monitor the prescribed percentage of reservation in the recruitment quota and it no way gives any prescriptive right to the applicant to be appointed overlooking his merit position. In any case, he was appointed ^{only} along with the selectees of 1987 ^{batch} ~~as~~ per the notification. He was not appointed along with the selectees of later select list. Hence, we see no violation of any rule if he is not shown as ^{being} ~~having~~ appointed with effect from August, 1987. Hence, his prayer for refixing the date of his appointment from August, 1987 is also not tenable.

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9. The learned counsel for the applicant submitted that though he has given his preference for being taken in the Fitters category, he was given only the Welders category. He joined the Welders post as the respondents forced him to join. When there are no vacancies in Fitters category the selectees who do not come within the number to be appointed against Fitters category they may be given some other category instead of not appointing them in the category for which they gave willingness to be appointed. The applicant being 114th in the merit list was given the post of Welder as it appears that there are no vacancies for him to be taken in the category of Fitter. However, we do not want to advert further in this contention as this is not one of the reliefs asked for in this OA.

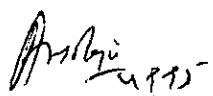
10. In view of what is stated above, we see no merit in this OA and this OA deserves only to be dismissed. Accordingly, it is dismissed. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 30th August, 1995.

Grh.


Dy. Registrar (Judl)

Copy to:-

1. General Manager, South Central Railway, Union of India, Secunderabad.
2. The Workshop Personnel Officer (W.P.O.), Carriage repair shop, Tirupathi.
3. The Dy. Chief Mechanical Engineer, Carriage Repair Sorkhsop, Tirupathi, Chittoor Dist.
4. The Chief Personnel Officer, South Central Railways, Secunderabad.
5. One copy to Mr. B. Sudhakar Reddy, Advocate, CAT, Hyd.
6. One copy to Mr. N. V. Ramana, CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

A N D

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

DATED 30-8 1995.

ORDER/JUDGMENT:

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

OA.No.

in

TA.No.

727/92

(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.

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