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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No.185/92.

Date of Decision: 24/4/95

Between:

1. N. Sai Baba
2. V.Muralidharan
3. V.Narsinga Rao
4. Y.Ramachandran

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Applicants

Vs.

1. Union of India, represented by
General Manager, South Central
Railway, Rail Nilayam, Sec'bad.
2. Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.

..

Respondents

APPEARANCE:

For the applicants : Sri G.Ramachandra Rao, Advocate
For the respondents : Sri N.R.Devaraj, SC for Railway

CORAM:

THE HON'BLE MR.JUSTICE V. NEELADRI RAO, VICE CHAIRMAN
THE HON'BLE MR. R.RANGARAJAN, MEMBER (ADMINISTRATIVE)

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J U D G M E N T

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

There are four (4) applicants in this OA and all of them came to Wagon Workshop at Rayanapadu while this workshop was being established. They had opted to come to this workshop when a notification dt. 19-6-1974 was issued by R-2 calling for such options. While giving options, the applicants were working as Chargeman Gr.'B' at different places and they were transferred to this Workshop in the same grade on various dates between January, 1976 to April, 1981.

2. The applicants after their joining at Rayanapadu, initially as Chargeman 'B', were promoted to the next higher grade of Chargeman 'A' in that Workshop on adhoc basis on 1-7-1976, 25-6-1981, 7-1-1980 and 25-6-1981 respectively. Subsequently, the applicants were also promoted on adhoc basis to the post of Deputy Shop Superintendents (Dy.S.S. for short) in the scale of pay of Rs.2000-3200 (R.S.R.P.) on 10.11.1980, 25.6.1981, 17.6.1982 and 20.9.1983 respectively (Annexures 1, 2, 3 & 4). Since then they are working in that capacity without reversion. It is stated for the applicants that though their promotions as Deputy Shop Superintendents were termed as adhoc, it was not really an adhoc promotion as they were promoted against clear vacancies of the sanctioned posts of Dy.S.S. and the adhoc promotions were only due to the fact that the avenue chart of promotions was not finalised till 1-9-1985. But the selections consisting of written and viva or viva only were not held while promoting the applicants to the post of Deputy Shop Superintendents which

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are selection posts. The ~~avenue~~ chart was finalised in the year 1985 and it was given retrospective effect from 1-9-1983. In the mean time, a notification was issued dated 1-5-1984 by the Railway Board communicating sanction to restructure certain categories of posts in Group 'C' with effect from 1-1-1984. As per para-4.1 of the above said notification dated 1-5-1984, the modified selection procedure had to be adopted for promotion of eligible candidates to selection posts without holding any written or viva voce tests but only on the basis of the records. All the applicants herein were regularised against the restructured posts with effect from 1-1-1984 in terms of office order dated 20-5-1985 (Annexure-5). Thus the date of entry for the applicants as Deputy Shop Supdts. ^{was} ~~were~~ reckoned from 1-1-1984.

3. The promotion to the post of Assistant Mechanical Engineer, Workshop is done on Zonal Railway basis and eligible candidates who are in the zone of consideration from all the workshops were alerted to keep themselves in readiness for appearing for the selection of Group 'B' post of Asst.Mech. Engineer (A.M.E. for short). 75% of the vacancies in the above said Group 'B' ^{are} ~~is~~ filled by selection on the basis of seniority-cum-suitability and 25% of the posts are through limited competitive examination. The promotion posts against 75% quota is done through a process of selection after passing the written and viva-voce tests. An integrated seniority list of Deputy S.S. and above is to be prepared for calling candidates for selection.

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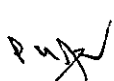
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4. R-2 vide proceedings dated 4-7-1991 issued a provisional seniority list of supervisory staff of Mechanical Department (Workshop) for selection to Group 'B' services (Annexure-7). In the said list there were a total number of 62 persons working in the category of Shop Superintendents and Dy.S.S. in various workshops in South Central Railway and the names of the applicants were not included in the said list. It is alleged by the applicants that names of their juniors in the category of Dy.S.S. were included in the list but their names were omitted. They made representations to R-2 against the said seniority list on 9-9-1991 and 10-9-1991. By letter dated 25-9-1991, R-2 had rejected the representation of the second applicant herein on the basis that the second applicant was regularised as Dy.S.S. only from 1-1-1984 and the earlier promotion from 25-6-1981 was only on adhoc basis pending finalisation of avenue chart. Representations of other applicants also were rejected.

5. Aggrieved by the rejection to regularise their services as Dy.S.S. in the Rayanapadu shop from the respective dates of their adhoc promotion, the applicants herein filed this OA praying for a declaration that they are entitled to reckon the seniority in the category of Dy.S.S. in the grade of Rs.2000-3200 (R.S.R.P.) from the dates of their initial promotion to the said posts with all consequential benefits including promotion to the next higher post.

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6. The main contention of the applicants is that their seniority should be reckoned from the dates of their initial adhoc promotion as they were working against those regular posts continuously without reversion upto the date of their regularisation on 1-1-1984. They further contend that their initial promotion was termed as adhoc only because of the fact that the avenue chart of promotion was not finalised till the year 1985. They rely on the Apex court judgment reported in X AIR 1990 S.C. 1607 - The Direct Recruit Class-II Engineering Officers' Association and Ors. Vs. State of Maharashtra and Ors. I for counting the period of adhoc promotion for seniority purpose. Their next contention is that employees junior to them in the cadre of Dy. S.S. who were appointed to that grade later than their appointment were included in the integrated seniority list issued on 4-7-1991 which is violative of the provisions of the Article 16 of the Constitution of India.

7. A counter affidavit filed on behalf of the respondents state, that the seniority of the applicants 1, 2 and 4 had been decided in comparison with their counterparts in Guntupally Workshop in T.A.No.925/86 (W.P.No.5002/85) whereby the applicants herein were to be shown as juniors to the applicants in that T.A. In view of the decision of this Tribunal in that T.A., applicants herein are prevented from raising the question of seniority against their counterparts in their workshops as Rules of Resjudicata will operate against them. It is further stated for the respondents that the seniority unit of each workshop is separate and the applicants cannot compare them with the

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employees of other Workshops. The promotions of the applicants to the cadre of Dy.S.S. prior to 1-1-1984 had to be treated as adhoc as the avenue chart was not finalised by them and senior optees had not been relieved and joined the new unit due to various administrative constraints. Adhoc promotions even for long term vacancies had to be resorted to as the Workshop was newly established and the cadre was yet to be formed. In order not to deprive the applicants of financial benefits, promotions on adhoc basis pending finalisation of avenue charts were made to the available persons at the material time submits the learned Standing Counsel for respondents. As the applicants have not come within the zone of consideration on the basis of their regular entry into the cadre of Dy.S.S., they were not called for the Group 'B' selection which is in order.

8. A Rejoinder has been filed by the applicants and they denied the various allegations.

9. It is admitted by the respondents that the applicants were promoted as Chargeman 'A' grade on 1-7-1976, 25-6-1981, 7-1-1980 and 25-6-1981 respectively on their joining the Wagon Workshop at Rayanapadu. The respondents also admit that the applicants were promoted to the post of Dy.S.S. in the scale of pay of Rs.2000-3200 (RSRP) on 10-11-1980, 23-6-1981, 17-6-1982 and 20-9-1983 respectively. But they deny the averments of the applicants that their initial promotion to the above posts are regular. The respondents categorically state that promotions of the applicants

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to the above posts were only adhoc prior to 1-1-1984 when the applicants were regularly promoted as Dy.S.Ss. against the restructured posts following the modified selection procedure.

10. There is no doubt that the Dy.S.S. posts are selection posts. Only by a positive act of selection, the employees can be promoted to selection posts. Employees promoted to the selection posts without following the selection procedure cannot be termed as regular. Even the applicants in their reply statement admit that they were promoted as Dy.S.S. without subjecting them to a process of selection. They only state that the promotion was termed as adhoc as avenue chart was not finalised. As the Rayanapadu Workshop was under the process of being established, it was not possible for the Railway authorities to prepare the avenue chart. Only when the workshop was established fully and optees have joined in the Shop, the cadre can be closed and the avenue charts published in consultation with the recognised unions. The Workshop officials had finalised the avenue chart only in the year 1985 with retrospective effect from 1-9-1983. Till then promotions made had to be treated as fortuitous and can be held as only stop-gap to carry on the workshop activities without interruption. It is also seen from the promotion orders issued to the applicants when they were promoted as Dy.S.S. that those orders were issued purely on adhoc basis without conferring on them any prescriptive right for continued officiating or regularisation in preference to their seniors working

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in that workshop or optees yet to join. It is clear from ^{that} stipulation in those orders that senior optees have not joined by the time the applicants were promoted as Dy.S.S. and hence the promotion of the applicants cannot be treated as regular. It is to be noted from the reply statement that the adhoc promotions given to the applicants were to give them only financial benefits as they were discharging the duties of higher posts. Such promotions given to the applicants without following the rules of selection and in preference to their seniors who were not declared unfit for promotion as Dy.S.S. and who were yet to join the Rayanapadu shop from other units, can only be termed as fortuitous promotion and cannot give any right to the applicants for regularisation from their initial date of appointment. Even the principle laid down by the apex court in "The Direct Recruit Class-II Engineering Officers' case - AIR 1990 SC 1607" is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. In view of the above, the adhoc promotion of the applicants from a date earlier to 1-1-1984 cannot be counted for seniority.

11. The applicants were promoted regularly from 1-1-1984 and this fact was known to them on 25-8-1985 when the office order, regularising their services as Dy.S.S. was issued with effect from 1-1-1984 against restructured posts following the modified selection procedure.

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If the applicants were aggrieved by not regularising them from the initial date of their adhoc appointment as Deputy S.S., they should have represented their case then itself and if there was no response to their representations from the respondents within a reasonable period, they should have approached this Tribunal much earlier. They need not have waited for the integrated seniority list to be published. As a Senior Supervisor, they were fully aware that their position in the integrated seniority will be only from the date of regular promotion. They filed this OA only on 3-3-1992 i.e. after a lapse of 7 years from the date of their regularisation as Dy.S.S. with effect from 1-1-1984 against restructured posts. By now, over 10 years have lapsed from their regular promotion. In the meantime a number of promotions in other units had taken place. Seniority already settled cannot be unsettled after the lapse of a considerable period. A perusal of the integrated seniority list dated 4-7-1991 issued by R-2 indicates that many of the employees shown on that list were working as regular Chargeman 'A' earlier to the adhoc promotions given to the applicants as Chargeman 'A' on their joining Rayanapadu shop. If the revision of seniority as requested by the applicants is granted they will become senior to those who were promoted as Chargeman 'A' on regular basis, earlier to the adhoc promotion of the applicants as Chargeman 'A' in Rayanapadu workshop. Had the applicants continued in their parent unit there is every likelihood that they would not have got even adhoc promotion

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as Chargeman 'A' and Dy.S.S. They were promoted to the category of Chargeman 'A' and Dy.S.S. in Rayanapadu Workshop as the special assistant as stated in the office orders while promoting them on adhoc basis. At this late juncture it is difficult to verify any of these facts and the request of the applicants now is very belated. Thus any revision of upward seniority of the applicants at this juncture will not only unsettle the already settled seniority position but will also prejudice the rights of the other employees for reasons stated above.


12. If the applicants are to be promoted regularly in the vacancies of Dy.S.S. existing earlier to 1-1-1984 or from the date they were initially promoted to the posts of Dy.S.S. on adhoc basis they have to be subjected to selection now as the posts of Dy.S.S. are selection posts and the applicants were not promoted after the due process of selection when they were initially promoted to that post. Subjecting them to selection at this juncture after a lapse of over a decade will not be correct and appropriate.

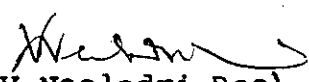
13. As the applicants had failed to represent their case in time and it will also be incorrect to subject them to a process of selection for vacancies that have arisen earlier to 1-1-1984^{or} in the vacancies they were promoted initially this OA is liable to be dismissed on the grounds of laches.

14. The respondents submit that the applicants cannot file this OA as their seniority position had already been decided in T.A.No.925/86 (W.P.No.5002/85) and as per that judgment the applicants herein had to be shown junior to

their counterparts in the same workshop and entertaining this application will be against the rule of Resjudicata. The applicants in their rejoinder state that they are not claiming any seniority over their counterparts in their workshop which was decided in TA 925/86 (W.P.No.5002/85) but only claim for reckoning of their seniority in the cadre of Dy.S.S. from their initial date of promotion to the said posts as they were promoted to the said posts against clear vacancies but they were termed as adhoc as the avenue chart was not finalised by that time. In the view we have already taken in this OA it is not necessary to go further into this contention.

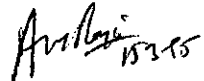
15. In the result, this OA is dismissed on the ground of laches. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated ²² February, 1995.

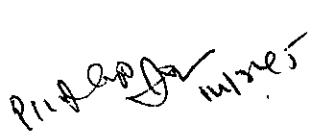
Grh.


Deputy Registrar (J) CC

To

1. The General Manager, S.C.Rly,
Union of India, 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.N.R.Devraj, SC for Rlys, CAT Hyd.
5. One copy to Library, CAT.Hyd.
6. 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

AND

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

DATED - 22-2-1995.

~~ORDER~~/JUDGMENT:

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

O. A. No.

in

185/92

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

14/3/95
NO SPATE COPY

