

129

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

C.A.NO. 219/92.

Date of Order: 4-9-1995.

Between:

- | | | |
|---------------------------|--------------------------|---------------------------|
| 1. J. Murali | 14. P. Lakshmana Rao | 28. B.V. Suryaprakash |
| 2. B. Haribabu | 15. N.G. Venkatesh | 29. J. Madhana Gopal Rao. |
| 3. K. Kondadaramanaidu | 16. M. Venkata Prasad | 30. V. Prakash |
| 4. B. Srinivasulu Naidu | 17. K. Balakrishna | 31. C. Nagaraju Naidu. |
| 5. S. Meeraiah | 18. Sk. Fazulla | 32. V. Bhaskar Rao |
| 6. G. Ravi | 19. O. Vijabhaskar | 33. Sk. CH. Nagurshah. |
| 7. M.V. Ramanaiah | 20. V. Venaiiah | 34. M.D. Galibkhan |
| 8. E. Sudhakar | 21. K.M.V. Prasad | 35. N. Munuswamy |
| 9. P. Venkatasuresh | 22. B. Mallikarjun | 36. V. Chinnderai |
| 10. S.V. Satyanarayanaiah | 23. P.V.S.R. Prasad | |
| 11. K. Ramakrishna | 24. P. Ramana Murthy | |
| 12. N. Rajendra Prasad | 25. S. Srinivasulu Reddy | |
| 13. N. Ashok Kumar | 26. G. Kunaiah | |
| | 27. B. Krishna Murthy | |

(All the applicants are working as Skilled Artisans in Carriage Repair Shop, at Tirupathi.) ... Applicants.

And

1. The Chairman, Railway Board, New Delhi.
2. The General Manager, S.C. Railway, Secunderabad.
3. The Chief Personnel Officer, South Central Railway, Secunderabad.
4. The Deputy Chief Mechanical Engineer, Carriage Repair Shop, S.C. Railways, Tirupathi.
5. C.V. Mukandan
6. V.B. Sampathi
7. K. Dara Rajulu
8. K. Sundar Rao
9. W. Pandurangadu
10. N. Rajamani

Respondents.

For the Applicant :- Mr. P. Krishna Reddy, Advocate.

For the Respondents: Mr. N.V. Ramana, SC for Rlys, Mr. G. Ramachandra Rao.
Sr./Add. CGSC

CORAM:

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

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

O.A.No.219/92.

Date: 4/9/95

J U D G M E N T

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

Heard Sri P.Krishna Reddy, learned counsel for the applicants, Sri N.V.Ramana, learned Standing Counsel for R-1 to R-4 and Sri G.Ramachandra Rao, learned counsel for R-5 to R-10.

2. This OA is filed by 36 applicants who were directly recruited Skilled Artisans, in Carriage Repair Shop (CRS for short), Tirupathy praying for a declaration that the guidelines issued by the Chief Personnel Officer, South Central Railway, Secunderabad in order No.P.612/Mech./CRS/TPYS/22 dated 24.7.1990 and all consequential orders viz. the provisional seniority list prepared on 3.9.1990 bearing No.TR/P-612 & TR/P-529 (Annexure-7) and the revised provisional seniority list of Artisans staff published in Notice Nos.TR/P-612/Artisan/Vol.II & TR/P-529/AVC dt. 8.12.1990 (Annexure-6), and the proceedings of the Chief Personnel Officer of even number dated 19.8.1991 (Annexure-1) rejecting the representation to the notice dt. 3.9.1990 ^{was} is illegal, and to direct the respondents to restore the seniority of the applicants which was prepared on the basis of posts held by them in the substantive/regular grades and to promote the applicants and give them seniority in the promoted posts on the said basis over and above the promotees who were given promotion subject to the result in OA 883/90.

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131

3. The facts which give rise to this OA are as under:-

(i) The Carriage Repair Shop (CRS), Tirupathy came into existence in the year 1981. There ^{were} ~~was~~ no staff available for forming the cadre to execute the works for which the shop was commissioned. In order to build up the cadre of the shop, volunteers were called for from serving staff of the South Central Railway working in various divisions and other workshop units. Notification dated 8.12.1981 was issued by R-3 calling for volunteers to come over to the CRS, Tirupathy cadre fixing 10.1.1982 as the last date of receipt of applications. Thereupon, employees from other divisions, workshops and various sheds of South Central Railway opted to come to this workshop.

(ii) Notification similar to the notification issued dt. 8.12.1981 calling for volunteers from various workshops and sheds from South Central Railway ^{was} being issued from time to time to augment the required staff strength in CRS, Tirupathy. The volunteers who opted in pursuance of the notification could not be relieved by various divisions and workshop units of South Central Railway in time and hence they were relieved as and when it became possible, and they joined the CRS, Tirupathy when they were relieved from their respective parent units. It is a fact that senior optees were relieved later than the junior optees even from the same parent unit and hence fixing up of ☐ inter-se seniority in the grade (in which they ^{were} absorbed) between the juniors who were relieved earlier than the seniors who were relieved later uniformly and to avoid inconsistencies, this Bench

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(132)

had held that these volunteers should be absorbed in the grades in which they were working by the date on which they were relieved and the service rendered in their parent unit in that grade has to be taken into consideration for regularising the seniority in the concerned grade on being absorbed in CRS, Tirupathy.

A copy of the notification dt. 08.12.1981 (Annexure-16) issued by R-3 is at page-48. The notification clearly states that the inter-se seniority of the employees coming from the same seniority unit has to be maintained on their absorption in CRS. As such seniors relieved later is shown as senior in the CRS, Tirupathy to the junior who was relieved earlier by his parent department and was absorbed earlier in CRS, Tirupathy.

~~Employment Notice No.1/84, dt.18-1-84 was issued/applications direct~~ ^{inviting} ~~for recruitment of Skilled Artisans in the scale of~~

Rs.260-400 in CRS, Tirupathy in the following trades:-


1. Fitter and Allied trades.
2. Carpenter and Allied trades.
3. Painter and Allied Trades.
4. Machinist/Operator and Allied trades.
5. Blacksmith and Allied trades.
6. Welder

In all, as per notification, 436 candidates had to be recruited ^{from open market} against the said notification. Apart from the usual conditions in regard to the age, qualification, stipend etc. the notification indicates the period of training in para-5 of the said notification. The relevant

portion in regard to the period of training is extracted below:-

"5. Period of Training: The training may be 6 months to 12 months and the selected candidates and their guardians/parents will be required to enter into an agreement with the Railway which inter alia provides for their completing the period of training should a candidate selected to undergo training, terminates his period of training without the written consent of the Government, or try to withdraw by wilfully absenting himself or by adopting any other tactics or if discharged for his conduct or any other offence during training or declines on completion of training to accept services as a Skilled worker in scale Rs.260-400 (RS) plus other allowances admissible from time to time in the Mechanical Department of this Railway or Resigns service within 5 years without the written consent of the Railway after accepting the posts, his parent/guardian shall have to repay the entire cost of his training."

The last date for receipt of applications was fixed as 29.2.1984.

(iii) The applicants herein are some of the direct recruits, who on selection, were appointed and they were sent for training in August, 1987. By order dt. 29.6.1987 they were sent for training in the month of August, 1987. According to Clause (C) of the above said order dt.29.6.87 (Annexure-13)  the trade test will be held to find out the suitability of the candidate who underwent training for specific requirements of the Railway before appointment in the workshop. Clause 'C' of the above said letter is extracted below:-

"(C) You will have to undergo Orientation Training for a period of six months to make yourself suitable for the specific

133

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requirements of Railway before appointment in working post. At the end of 6 months training, your suitability will be adjudged by trade test. If you fail in the trade test your services will be terminated forthwith."

(iv) It is stated for the applicants that they completed six months training by February, 1988 and no trade test was held and the training was extended by three months without any specific order whatsoever. The training was declared to have been completed after 9 months and the orders of posting were given by order dt. 9.6.1988 to direct recruits viz. applicants 1 to 15 with effect from 13.5.1988 and the rest of the applicants, with effect from 19.5.1988 as the training period was extended by three months. Some of the direct recruits filed OA 792/89 praying that the extension of training period for 3 months is illegal and without jurisdiction and to include the extended 3 months training period as service in the category of Skilled Artisan Grade-III with all consequential benefits. It is seen from the judgment dt. 15.12.1989 in the said OA 792/89 the respondents submitted that the period of training was extended by 3 months as it was found that "the trainees had not come up to the required standards within that period of six months training to take-up repairs of ICF coaches independently, and that additional functional skills expected of them to be developed in other associated trades could not be attained due to inadequate training facilities in the CRS, Tirupathy since the project was

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134

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still at the construction stage." In view of the reasons given by the respondents the OA 792/89 was dismissed by observing "that the extension was ordered for certain valid administrative reasons and as such there is no merit whatsoever in the allegation of favouritism and nepotism". Another OA 802/89 was filed before this Tribunal and it was also dismissed on 15.12.89 following the judgment in OA 792/89.

(v) The applicants 1-15 herein and some others were regularly appointed as Skilled Artisans with effect from 13.5.1988, and applicants ~~from 16 onwards~~ and some of the direct recruits were appointed as Skilled Artisans with effect from 19.5.1988 by order dt. 9.6.1988. The said Order bearing No.TR/P/563/DR dt. 9.6.1988 (Annex.12) is at page-31 of the material papers filed with the O.A.

(vi) In the meantime by order No.TR/P.535/Artisan/Vol.II dt. 12.5.1988 (Annexure-11) 66 Semi Skilled employees who were in service candidates, were promoted to Skilled posts on adhoc basis by R-4. In addition, 202 persons who entered in CRS, Tirupathy as Unskilled Labourers were also promoted on adhoc basis in the first instance as Semi Skilled and thereafter as Skilled in quick succession on adhoc basis. It is stated for the applicants that number pf persons who have been promoted to Skilled grade from among the serving employees were promoted from the category of unskilled to semi-skilled only on 6.5.1988 and within a week they were promoted to Skilled grade. It is further alleged for the applicants that 202 candidates who entered the CRS as unskilled were given promotions by 12.5.1988 and out of them many were given double promotion within a period of one week from unskilled to semi-skilled and immediately from semi-skilled to skilled. It is also

alleged for the applicants that the semi-skilled employees were promoted to skilled without holding any trade test and without any consideration for the minimum service to be put in by the employees before promoting them to the higher posts by ignoring the instructions of the Railway Board.

(vii) For the first time, a provisional seniority list of Artisans of CRS, Tirupathy was published on 15.1.1990 (Annexure-10) bearing No. TR/P.529/Mech./TR/P.612/ Artisan ~~was published~~. The applicants were given their due places in the seniority list. 202 unskilled employees who got promotion on adhoc basis to Skilled category were not included in ^{that} seniority list as the seniority list contained the names of only regular promotees but not adhoc promotees. It is ^{the} case of the applicants that without any representation from any individuals questioning the said seniority list, the said seniority list was revised on the basis of representations received from the recognised unions. It is further stated that the recognised unions demanded that the seniority list should also include departmental promotees. In pursuance of the representations of the Unions, a meeting was held between R-3 and the representatives of the recognised Unions. It is the allegation of the applicants that the direct recruits were not given any opportunity to participate in the deliberations even though everybody knows that they are also necessary parties for such meeting. As per the decision taken in the meeting, the adhoc promotions of serving employees will be treated as regular promotion from the date of their promotion on adhoc basis. As a result of the said decision, the seniority of direct recruits was lowered down by 203. Serving employees ^{who} were

given promotions from the category of unskilled to skilled on adhoc basis ^{has been} was shown seniors to the applicants. Based on the above decision, ~~of~~ R-3 issued guidelines by order dt. 24.7.1990 bearing No. P.612/Mech/CRS/TYPS/22 (Annexure-8). Following the above guidelines given by R-3, seniority list of various trades was published ^{by} ~~the~~ Notice bearing No. TR/P-612/TR/P-529 dt. 3.9.1990 (Annexure-7) by R-4. The salient feature of this notice is extracted below:-

- "1. The interse seniority of optees ^{is} is based on length of regular service in the grade as on 15.11.1982.
2. The staff who were given adhoc promotion pending finalisation of AVC are fitted provisionally from the date of their promotion on adhoc basis. The seniors who are to be promoted are however shown in their respective/yet based on place their interse seniority.
3. The seniority of direct recruits are reopened from the date of posting against working post and as per the panel position.
4. Till the cadres is finally closed, the seniority list will remain provisional."

Opportunity was given to the staff to submit their representations, if any, on the details of seniority on or before 15.9.1990. The applicants submit that treating ^{of promotees} the adhoc service/as regular is contrary to the submission made by the respondents in OA 792/89.

(viii) Some of the direct recruits who are among the applicants herein filed OA 883/90 questioning the notice dt. 3.9.1990. That OA was disposed of on 21.6.1991 by

order of this Tribunal dt. 21.6.1991. As per the said order, it was open for the applicants therein to make representations ~~both against~~ the guidelines dt. 24.7.1990 issued by R-3, as well as notice dt. 3.9.90 issued by R-4.

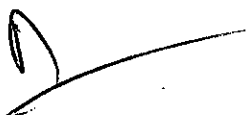
ix) Soon after the disposal of OA 883/90 on 21.6.91 the official respondents by their notice dt. 12.7.91 had revised the seniority of the Diesel optees who joined in CRS as Khalasis in the scale of Rs .750-940 by interpolating their names in the seniority list of existing staff but joined earlier on option as Khalasis. It is stated that the interpolation has been done ~~as per the~~ guidelines dt. 24.7.1990 issued by R-3 . By order dt. 17.8.1991 bearing No.TR/P.535/Art/Vol.III (Annex.4) the above said Diesel Optees who were unskilled were promoted to skilled after holding trade test.

(x) The applicants submitted representation dt. 3.8.91 to R-2 with copies to R-3 & R-4, in addition to making available their earlier representation. In the mean-while the revised provisional seniority list dt. 8.12.90 was also issued on the basis of the ^{earlier} provisional seniority list dt. 3.9.1990. The representations submitted to R-2 were disposed of by letter dt. 19.8.1991 bearing No. P.612/Mech/CRS/TFYS/22 (Annexure-1) by R-3 rejecting the representations of the applicants.

in the letter dt. 19.8.91

(xi) The gist of the reply given is summarised as follows:-

1. Adhoc promotion is given pending finalisation of Avenue Chart and complete transfer of all senior optees to workshop.



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in pursuance
of the direc-
tions of this
Tribunal in
OA 883/90

(138)

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2. The available staff were promoted as there were not enough staff to man all the positions at the material time and no discrimination has been made.
3. There were no violation of any Railway Board's orders regarding adhoc promotions as the Railway Board's circular referred to was in regard to promotions made in normal/ongoing cadre. The situation in CRS, Tirupathy was not of an ordinary circumstance where the cadre was to be formed by bringing in optees from different areas of the Railway over a considerable period. The situation of uncertainty was prevailing for quite some time due to the prevailing conditions. Hence, it has resorted to adhoc promotions continuously as well as promotion to more than one grade.

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4. Aggrieved by the above rejection of their representation for revision of seniority, the applicants herein have filed this OA on 9.3.1992 under sec.19 of the A.T. Act, 1985 as above.

5. The various issues in regard to the seniority dispute are analysed as under:-

(1) The first contention of the applicants in this OA is that the inservice candidates had been promoted only on adhoc basis and hence they can get the seniority only from the date they were regularly promoted. As the applicants are direct recruits, they should be shown senior to R-5 to 10 (viz. inservice candidates) as per the date of their regular promotion which was later than the absorption of the applicants in this O.A.

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The workshop was^a newly formed one and the cadre strength was built from various sources by inviting options from the serving employees of South Central Railway in divisions, workshop units and other loco sheds. The optees were absorbed in the grade in which they were working at the time of relief and their seniority in that grade was accordingly fixed. They were promoted to higher grades subsequently as there were ^{sanctioned} posts available for them after conducting the necessary selection/test but their promotion^d was treated as ashoc in view of the fact that their seniors even in their parent unit were relieved later and joined the CRS, Tirupathy at a later date. To facilitate interpolation of seniors who joined later in the seniority list, the promotion of the juniors who are optees to CRS, Tirupathy was treated as adhoc when they were promoted in CRS, Tirupathy. This point was considered elaborately in OA 903/92 wherein it was held by us "that the promotees who were promoted after qualifying in selections/tests before the date of cadre closing and against a clear vacancy of a sanctioned post will reckon their seniority from the date of their promotion though their promotion is termed as adhoc." It was further held in that OA that "date of entry into the cadre eventhough termed as adhoc will decide the interse seniority between the promotees and direct recruits." In view of the above observation by us in OA 903/92 which was disposed of on that basis, it is not necessary to further elaborate on this point. The date of entry into the promoted cadre will determine their date of promotion of inservice candidates if they are promoted against a sanctioned posts following the due procedure for such promotion if they fulfill necessary eligibility conditions. It is needless to say that the date of entry into the cadre after successful completion of the training period will ^{normally} determine the seniority position

of the direct recruits.

(ii) The private respondents in their counter affidavit state that the applicants who are directly recruited Skilled Artisans were appointed in excess of the quota earmarked for direct recruits. It is their contention that only 25% of the posts are to be filled by direct recruitment and appointing 240 direct recruits is in violation of recruitment rules. In the reply dt. 19.8.1991 given by R-3, in para-2.6 of that letter, it has been stated that "the direction given by the Railway Board in respect of adhoc promotions refer to the normal circumstances in the on-going cadre." The above stated reply further indicate that the situation in CRS, Tirupathy is not of an ordinary circumstances and hence adhoc promotions and promotions to more than one grade was ordered. In view of the above, non adherence of the percentages indicated as referred to above will not vitiate the reckoning of seniority of direct recruits from the date of their actual entry into the cadre. It is not necessary to elaborate further on this point also as this point was already considered in OA 903/92 wherein we had held that "as the workshop was in the initial stage of formation strict adherence of recruitment rules in regard to percentage quota fixed against promotion and direct recruitment is not practically feasible. Hence, it had to be held that the quota rule has failed and the date of entry is the criterion for fixing the seniority.

(iii) The applicants contend that in OA 792/89 the respondents therein have submitted that adhoc period for the promotees will not count as service for seniority, but now they have taken a different stand of conferring the seniority on the promotees even for the adhoc posts/periods. The respondents in their counter admit that they have

(141)

indicated in the counter in OA 792/89 that adhoc period will not count as service for the purposes of seniority. They further state that "at the same time, it is also submitted that it is premature to say that the applicants will be seniors to those promoted on adhoc basis". As already stated above, the promotions against clear vacancies have to be termed as adhoc to protect the interests of senior optees who were yet to be inducted into the workshop and this cannot by any stretch of imagination be taken as a safeguard to consider the applicants as seniors. From the above submission and the peculiar circumstances in which the staff strength was built for Tirupathy workshop, we have held as stated above in the earlier OAs that the adhoc service had to be counted for the purposes of reckoning the seniority. It is further stated for the applicants that counting of adhoc service for counting seniority is against the rules of seniority of Railway Board. This contention cannot be accepted as the workshop was in the nascent state of formation and hence, the normal seniority rules cannot be applied in the strict sense in this case. No instruction of Railway Board is quoted by the applicant to substantiate their claim. Even in rejoinder this point is not elaborately discussed except saying that the rules as stipulated by Railway Board is infringed.

(iv) The next complaint of the applicants that as they were not party to the meeting held between R-3 and the recognised unions on the basis of which, the necessary guidelines were issued to the CRS workshop dt. 24.7.1990 (Annexure-8) cannot be sustained and by issue of these guidelines they are prejudiced. Eventhough they were not represented in the meeting, opportunity was given to them to represent their case against the provisional seniority

(142)

list when the provisional seniority list was issued. Even if they are not party to that meeting, the very fact that opportunity was given to represent against the provisional seniority list is enough to ventilate their grievances against the said provisional seniority list. Hence, the principles of natural justice had not been violated.

(v) The respondents contend that extension of training period for the direct recruits have been upheld by the Tribunal in OA 792/89 and OA 802/89 and hence, the same issue cannot be re-agitated in this OA. As pointed out in earlier paragraphs, the OAs 792/89 and 802/89 were dismissed on the basis that the extension of training period was ordered on valid administrative reasons and it was also held in those OAs that the allegations of favouritism and nepotism does not merit consideration. In view of the above observations, it has to be held that those two OAs were disposed of on merits and hence, the period of extension of training for the direct recruits for 3 months had to be held as valid and that issue cannot be reopened in this OA. The seniority of the applicants i.e. direct recruits had to be counted from the date they had been appointed after successful completion of training period in the normal course. From the order dt. 9.6.1988 (Annexure-12), the date of absorption of applicant as Skilled Gr.III has been indicated in col.6 of the above quoted letter. These dates have to be taken for the purposes of seniority normally. For reasons stated in the following paragraphs slight departure ^{from} for the above in reckoning the seniority of direct recruits is warranted.

143

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(vi) The next contention of the applicants is that the promotees were promoted without proper trade test and this is opposed to the provisions in the manual for promotion to the Skilled grades. The 67 promotees from semi-skilled to skilled Gr.III in the grade of Rs.950-1500 were given promotion with effect from 12.5.1988 as can be seen from the letter No.TR/P.535/Artisan/Vol.II dt. 12.5.1988 (Annexure-11). Whether they were promoted after passing the necessary trade test or not has to be examined only from the available records. The trade test must have been conducted earlier to 12.5.1988. After long pursuation the respondents produced records to show that the officials indicated in the letter dt. 12.5.1988 were trade tested between 18.4.1988 to 10.5.1988. It is also seen that they passed the necessary trade tests. The contention that trades were not allotted to them and because of non-allotment of trade, conducting of trade tests was not feasible cannot be sustained in view of the fact that the office order shows the shop in which they were working as Semi-skilled earlier. Hence, the promotion for them to the Skilled Grade.III should be on that basis. Even if no trade is allotted, the fact that they were found suitable for promotion from semi-skilled to skilled by conducting trade tests on the basis of the trade in which they were working as semi-skilled would have given them necessary expertise for discharging duties connected with higher skill, and on that basis we cannot find fault with their promotion. As the workshop was in the formation stage, the trade test could have been conducted only in the available trades wherein vacancies existed and hence, it has to be construed that the employees

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were trade-tested for their particular trade to which they are absorbed in the skilled category. Hence, this contention that no trade test was conducted is not tenable and non-allotment of trade will not entitle them to be promoted to the skilled grade cannot also be upheld.

The respondents state that allotment of trades on 11.8.1990 relates to re-allotment of optees to various trades depending upon the Avenue of promotion charts and the number of Artisans required for various trades and this cannot be taken to mean that no trade tests have been conducted in respect of optees before their promotion to skilled grade. The above observation further strengthens that regular trade tests in the appropriate category were conducted and there is no repudiation of this fact in the reply affidavit of the applicants.

(vii) Further, the applicants contend that the promotions that were ordered from unskilled to semi-skilled and from semi-skilled to skilled, violate Board's instructions of minimum service in the lower grade before giving promotion to the inservice staff to higher grade.

The respondents in their reply in para-11(iv) submit that the instructions regarding minimum service is applicable only for promotion within Group 'C' posts in normal course. Therefore, the promotions ordered from unskilled to semi-skilled and further to skilled do not violate any Board's instructions and there is no rebuttal in this regard in their reply affidavit by the applicants. Moreover, the optees have rendered service in their parent units and that service had to be taken for considering the minimum eligibility period for promotion, if any. Hence, this contention of the applicants cannot hold water.

(145)

(viii) It is the case of the applicants that the promotees have been promoted on 12.5.1988 a date ahead of their absorption in the skilled grade i.e. 13.5.1988, thereby alleging favouritism and nepotism. It is further stated for the applicants that the urgency with which they were promoted by issuing promotion order a day earlier to their regular absorption will conclusively prove the motive of the respondents in promoting them.

On the above allegation the seniority proposal can be debated to suit both the parties. It may be possible that the promotees were not promoted in time ~~as~~ ^{as} the respondents could not conduct the trade test due to pressure of work. In that case, the promotees can have a case for getting the seniority. But, at the same time the direct recruits could have got their turn even in February, 1988 if there was no extension of period of training. As said earlier, the seniority case has to be evenly poised between the direct recruits and the promotees who are promoted on 12.5.1988. When the date of entry is relevant for fixation of seniority, it cannot be left to the whims and fancies of the concerned authorities to decide this issue in favour of one or the other. If the concerned authorities felt that the direct recruits have to be shown as seniors then necessary finalisation in regard to the promotions can be delayed to a date beyond the date of actual appointment of direct recruits. But, if the authorities wish to prefer promotees, it is possible to finalise them even before the completion of training. The above possibilities either way cannot be

/who were
appointed
on 13.5.88/
19.5.88

146

ruled out. But no record is produced to show that the authorities took one of the stands. But, there is reasonable suspicion that the authorities could have favoured one of these groups. Hence, as stated earlier, under the prevailing circumstances in this case, it is preferable to follow the middle course by granting seniority, wherein both the groups will have nothing much to complain regarding their seniority.

needless to
It is ~~say~~ that those who were promoted earlier to 12.5.1988 should be given seniority above the direct recruits appointed as on 13.5.1988/19.5.1988 and the promotees who were promoted as on 12.5.1988. Thereafter, the seniority list last issued to the posts of Skilled Artisan Gr.III category-wise has to be referred to for fixing the seniority of direct recruits and promotees ^{who} ~~were~~ appointed ~~ted~~ promoted on or after 12.5.1988. 50% of the total category-wise number of Skilled Artisans ~~in~~ the last seniority list issued before 12.5.1988 is to be calculated from the seniority list referred to above. Equivalent to 50% of the number of Skilled Artisans Gr. ~~III~~ ^{as calculated above} direct recruits ~~appointed~~ to the Skilled grades on 13.5.1988/19.5.1988 are to be placed below those Skilled Artisan category-wise promoted earlier to 12.5.1988. Equal number of promotees equivalent to 50% as referred to above who have promoted as on 12.5.1988 should be placed below the direct recruits in the seniority list. This process of alternatively fixing seniority between direct recruits and promotees will be continued till the full list of those promoted against direct recruits and promotees are accommodated in the seniority list, ~~as above~~.

147

The above can be illustrated by the following example:-

In the case of Fitters trade we will presume that there ~~are~~ 'x' Skilled Artisan Gr.III included in the last seniority list. Direct recruits appointed as on 13.5.1988 to the extent of 'x/2' will be placed in the seniority list ~~before~~ below that of those promoted earlier to 12.5.1988. Equivalent number i.e. a number equivalent to 'x/2' of the promotees promoted as on 12.5.1988 will be placed below the direct recruits. This process of alternatively fixing seniority of direct recruits and promotees will be continued till the list of promotees promoted on 12.5.1988 and direct recruits appointed on 13.5.1988/19.5.1988 is completed.

The above in our opinion will be equitable and *just and proper* ~~may not cause much hardship to either group.~~ Though seniority disputes cannot be resolved to the ^{entire} satisfaction of everybody, unless there is clear-cut rule ~~an~~ attempt can only be made for equitable solution. In this case, for reasons mentioned above, there are no clear-cut rules to decide the seniority list. Hence, a solution as indicated above, in our opinion, is satisfactory.

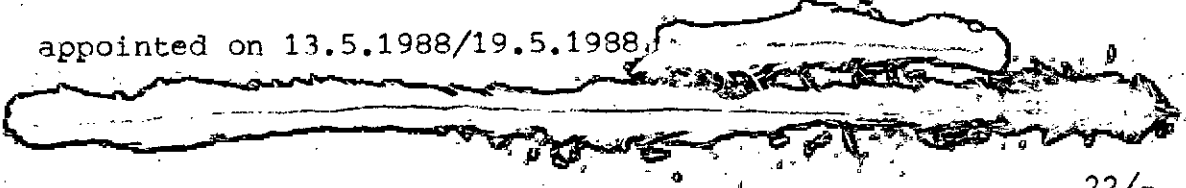
(ix) The applicants complain against inclusion of 52 Diesel optees in the seniority list of semi-skilled to skilled by order dt. 17.8.1991 after they had joined CRS, Tirupathy as Khalasis in the scale of Rs.750-940. The respondents in their counter state that these Diesel optees who joined from Diesel Sheds of Gooty, Guntakal

and Kazipet were promoted to higher grades due to their interse seniority as they were sufficiently senior to the employees joined much earlier in Tirupathy workshop. The respondents further submit that these Diesel Optees have passed the trade tests in their respective trades. In view of the fact that seniors when joined later have to be given their due place if their juniors are already in the higher grade, the promotion of Diesel optees cannot be faulted.

(x) The representation dt. 3.8.1991 submitted by the applicants in pursuance of the directions given in OA 883/90 was disposed of by R-3 whereas this should have been disposed of by R-2 as directed by this Tribunal. ^{submits the applicant,} It is not possible for R-2 viz. the General Manager, who is the head of the organisation to dispose of each and every representation of the employee. He has to lean on the assistance of R-3 in collecting the necessary details and approve the reply prepared on that basis. R-3 issues such approved reply in his name. It is further submitted for the respondents in the counter affidavit that the guidelines dt. 24.7.1990 were issued with the personal approval of R-2 and hence the dismissal of the representation by R-3 in accordance with rules and guidelines is in order. We accept this submission.

6. From the above analysis, we direct as follows to fix the seniority between the direct recruits and promotees:-

(1) All the Skilled Artisans Gr.III who were promoted either on adhoc basis or otherwise prior to 12.5.1988 have to be shown above the direct recruits appointed on 13.5.1988/19.5.1988.



Copy to:-

1. The Chairman, Railway Board, New Delhi.
2. The General Manager, South Central Railways, Secunderabad.
3. The Chief Personnel Officer, South Central Railway, Secunderabad.
4. The Deputy Chief Mechanical Engineer, Carriage Repair Shop, South Central Railways, Tirupathi.
5. One copy to Mr. P. Krishna Reddy, Advocate, CAT, Hyd.
6. One copy to Mr. N. V. Ramana, SC for Railways.
7. One copy to Mr. G. Ramachandra Rao, Advocate, CAT, Hyd.
8. One copy to Library, CAT, Hyd.
9. One spare copy.


kku.

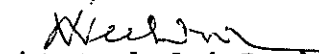
(149)

- (ii) 50% of the Skilled Artisans calculated as per the last seniority list prior to 12.5.1988 issued for Skilled Artisan Gr.III trade-wise has to be noted for further fixing the seniority of direct recruits, and promotees promoted on or after 12.5.1988.
- (iii) Direct recruits to the extent of 50% as calculated in para-(ii) above should be placed in the seniority list below the promotee Skilled Artisans referred in Cl.(i) in the appropriate trade-group.
- (iv) Equivalent to the ~~number~~ as in item-(iii) above, those promoted on 12.5.1988 should be placed below the direct recruits as indicated in para-(iii) above.
- (v) Fixing of seniority alternatively between the direct recruits and the promotees as indicated in paras-(iii) and (iv) above should be continued till the whole list of direct recruits appointed on 13.5.1988/19.5.1988 and the promotees^{promoted} on 12.5.1988 is completed.


7. The above exercise should be completed within a period of 3 months from the date of receipt of this order and the result of the exercise thereof should be displayed prominently in the official notice board of the workshop for perusal of the applicants, private respondents and all other staff of workshop unit.

8. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 4 th Sep., 1995.


Dy. Registrar (Judl)

Grh.

p.t.o.