

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO. 82 of 1993 वा  
82x5fx1993 and M.A.NO.72/93 in OA 84/92

DATE OF JUDGMENT: 29th June, 1993.

BETWEEN:

MA 72/93 in  
O.A.NO.84/92

1. Mr. Lakshmaiah
2. Mr. E.Narsinga Rao
3. Mr. P.L.Narsimha
4. Mr. Narendra
5. Mr. K.Malla Reddy

Applicants

and

1. Union of India represented by  
General Manager,  
South Central Railway,  
Secunderabād.
2. The Chief Personnel Officer,  
S.C.Railway,  
Secunderabād.
3. The Deputy Controller of Stores  
(Mechanical & Electrical),  
S.C.Railway,  
Secunderabād.
4. Mr. S.Krishna

Respondents

O.A.NO.82 of 1993

1. Mr. Erraiah
2. Mr. Shaik Sabir
3. Mr. Shaik Magbool
4. Mr. T.Narayana

Applicants

AND

1. Union of India represented by  
the General Manager,  
South Central Railway,  
Secunderabād.

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said trade test, they shall also permit such of the applicants before us, who are seniors to the 4th respondent prior to issuance of the impugned order;

(c) the results of any such examination held in respect of the 4th respondent and any such applicants as stated above, will however be with-held until further orders."

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But when inspite of the said order, the 5th applicants in OA 84/92, was not promoted and he and the applicants in OA 320/92 who were also working as Khalasi Helpers in the Factory demanded that the trade test should be prescribed to them also by alleging that Shri Krishna was junior to them and when it was being conducted for Shri Krishna, they too should be permitted to appear for the said test. Ultimately on 2.5.1992 the trade test was conducted wherein Shri Krishna, 5th applicant in OA 84/92, and all the five applicants in OA 320/92 were permitted to appear and all of them appeared for the said test, but the result was not published in view of the interim order dated 27.2.1992 of this Bench. Ultimately the OAs 84/92 and 320/92 were dismissed by this Bench on 21.10.1992. But it was observed in the order dated 21.10.1992 in the above OAs that "the 4th respondent in OA 84/92 (Shri S.Krishna) can have only the benefit of 1974 seniority as Khalasi in the Factory. As for his seniority in the next stages, semi-skilled, skilled etc., these have to be strictly regulated in accordance with rules taking into account his passing the prescribed tests and his revised seniority as decided by the General Manager".

4. The trade test that was conducted on 2.5.1992 was cancelled and a fresh notification was being issued as per the orders dated 23.12.1992 of the Deputy Controller

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(123)

in the OA 84/92 and Shri S.Krishna. (Respondent No.4 in OA 84/92) exercised their option. On the basis of the said option, the applicants in OA 84/92 were appointed in the Factory as Khalasis between July 1974 and October 1981 but Shri S.Krishna was not selected for appointment as Khalasi in the Factory as he was under suspension from 9.5.1974 to 6.6.1974 in connection with detention in judicial custody. However, in October 1981 Shri Krishna was posted to the Factory. Then he requested for his seniority in the Factory from 1974 and the same was rejected. Then he went back to Stores at his request and again wanted to come to the Factory and he was posted in the Factory in December 1982 on bottom seniority basis. Then, he made a number of representations and ultimately the General Manager of the concerned Railway restored his seniority from 1974 and then he was placed at Sl.No.17 while the serial numbers of the applicants in OA 84/92 were 4, 7, 9, 14 and 21 respectively. They challenged the order of the General Manager in giving Shri Krishna the seniority by treating him appointed in 1974 in the Factory.

3. The authority/selected Shri Krishna for the trade test from the post of Khalasi Helper (Semi-skilled) to skilled after he was given seniority as per the order dated 7.12.1990 passed by the General Manager. On 27.2.1992, this Bench passed an interim order and the relevant portion is as under:-

"(b) the respondents will be at liberty to hold any trade test for promotion from semi-skilled to the next higher grade (i.e., skilled grade-III) and apart from permitting the 4th respondent to the above

that it would be in operation till the disposal of the appeal only on the main proceeding. Hence, no further order is necessary as to the disposal of the main proceeding or the appeal, for setting aside the interim order. But it cannot be stated that whatever might be the purport of the interim order, the same would not survive after disposal of the main proceeding or appeal. In this case, this Bench had given liberty to the concerned authority to conduct trade test to Shri Krishna and the applicants therein were also permitted to appear for the trade test. In view of the contention in the OA, this Bench rightly felt that the result of the said test ~~should~~ will not be published until further orders. Thereby, it cannot be stated that the said interim order had come to an end after disposal of the OA 84/92. In such a case, it is necessary for the concerned authority to seek permission of the Tribunal as to what has to be done in regard to the test already conducted or as to whether the results of the said test have to be published either in regard to Shri Krishna or in favour of all the other candidates who appeared for the said test. But it was not so done.

7. Further, there is another infirmity in the order dated 23.12.1992 in cancelling the test that was conducted on 2.5.1992, as no reasons were given for such cancellation. The concerned authority alerted Shri Krishna for conducting the test after the order dated 27.10.1990 was passed by the General Manager, for he was then eligible within the zone of consideration for promotion. By the interim order dated 27.2.1992, this Tribunal had given liberty to the concerned authority to conduct the said test in regard to Shri Krishna. Ultimately, the order dated 27.10.1990 of the General Manager was upheld by this Bench while dismissing the OA 84/92.

of Stores. By the memo dated 13.1.1992 of the District Controller of Stores, Shri S.Krishna was informed that the trade test for the skilled post would be conducted on 2.2.1993. Then the OA 82/93 was filed by the very same applicants in OA 320/92 challenging the order dated 23.12.92 of the Deputy Controller of Stores and the memo dated 30.1.1993 of the District Controller of Stores. The applicants in OA 84/92 filed MA 72/93 praying for declaration of the results of the trade test conducted on 2.5.1992.

5. The first and the foremost point for consideration is as to whether it is open to the concerned authority to cancel the trade test that was conducted when this Bench by the order dated 27.2.1992 gave a direction for conducting such a trade test and by further observing that the result should not be published until further orders. It is contended for Shri Krishna and also the concerned authority that when once the OA 84/92 was dismissed, the interim order passed therein would not survive and hence the concerned authority was justified in cancelling the trade test. It was further contended for them that as the trade test on 2.5.1992 was conducted in a tense atmosphere, the authorities felt that the candidates who appeared for the said test would not have peace of mind while attending to the said test and hence the said test was cancelled, and as now only Shri Krishna was eligible for promotion to the ~~xx~~ skilled category, he alone was alerted for the said trade test as per the memo dated 13.1.1993.

6. There may be some interim orders which were not have any operation after the disposal of the main proceeding, ~~but in a case~~ of interim stay of operation of the order or interim suspension of an order pending disposal of the appeal. In such a case, the very interim order specifies

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that the above applicants have no <sup>loc</sup> - standi to challenge the cancellation of the trade test held on 2/4.5.1992.

10. In view of the pressure brought out by the applicants in OA 320/92 who were also the applicants in OA 82/93, they were permitted to appear for the trade test on 2/4.5.1992 even though there was no Court order in their favour and they were not within the zone of consideration for promotion to the skilled category. Hence, there is justification for cancellation of the trade test held on 2/4.5.1992 in regard to the four applicants in OA 82/93.

11. Admittedly, the 5th applicant in OA 84/92 is senior to Shri Krishna on the basis of the seniority list which was prepared earlier to the date on which Shri Krishna was given seniority on the basis that he was appointed in the Factory in 1974. Hence, in pursuance of the interim order dated 27.2.1992 of this Bench, the said 5th applicant in OA 84/92 <sup>was with</sup> should be permitted to appear for the test along with Shri Krishna and he was rightly permitted to appear for the said test. Then the question arises as to whether ~~the~~ a direction should be given for declaration of the result of the 5th applicant in OA 84/92 when in view of the result in OA 84/92 he is not within the zone of consideration for promotion to the skilled category. Para 24(c) of the Railway Establishment Manual lays down that an employee who has passed suitable test once need not be called for the test again and he should be eligible for promotion as and when vacancy arises. So, I feel that even though the 5th applicant in OA 84/92 is not in the zone of consideration

*Q/A (C) 24/2*

Thus, <sup>does not fall in</sup> dismissal of the OA 84/92 was not on the ground of cancellation of the trade test held on 2.5.1992, so far as Shri Krishna is concerned.

8. It was not stated for Shri Krishna during the pendency of OA 84/92 that because of the tense atmosphere he could not either properly prepare for the said test or that he could not satisfactorily attend to the said test.  
It is not even stated that Shri Krishna represented to the authority requesting for cancellation of the said test that was held on 2/4.5.1992. Hence, the order dated 23.12.1992 cancelling the trade test that was conducted on 2/4.5.1992 is arbitrary.

9. Shri N. Ramamohan Rao, learned counsel for Shri Krishna contended that the applicants in OA 84/92 and 82/93 have no loco-standi to challenge the order dated 23.12.1992 cancelling the trade test that was held on 2/4.5.1992. But the said contention is not tenable. If Shri Krishna passed in the trade test that was held on 2/4.5.1992, then his seniority in the semi-skilled category would reflect in the skilled category also. It is on the basis that it should be deemed to be the first trade test that was held for Shri Krishna. But if he fails in the said trade test, he has to appear again for another trade test and if passed in the subsequent trade test, he can claim seniority only from the date on which he passes the said test. That is the effect of the order that was passed in t/c OA 84/92. Hence, when the cancellation of the trade test that was held on 2/4.5.1992 will effect the seniority of the 5th applicant in OA 84/92 and the applicants in OA 82/93, if Shri Krishna fails in the said test, then it cannot be stated

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Copy to:-

1. General Manager, South Central Railway, Union of India, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Secunderabad.
3. The Deputy Controller of Stores (Mechanical & Electrical), South Central Railway, Secunderabad.
4. The District Controller of Stores, (C&S), South Central Railway, Secunderabad.
5. One copy to Sri. G.Ramachandra Rao, advocate, CAT, Hyd.
6. One copy to Sri. N.V.Ramana, SC for Railways, CAT, Hyd.
7. One copy to Sri. N.Ram Mohan Rao, advocate, for P-S, CAT Hyd.
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Case Number	CA 2/134/MN 12/93
Date of Judgement	21.6.93
Copy made ready on	15.7.93

*[Signature]* *Deputy Officer (I)*

for promotion to the skilled category even now, still it is proper to direct the respondents to declare the result, for he was permitted to appear for the test in pursuance of the order of this Tribunal. On the basis of mere pass in the trade test ahead of the senior, he cannot claim that he should be promoted even when his turn has not arisen. Hence, it is just and proper to direct the concerned authority to publish the result of the 5th applicant in OA 84/92 also in pursuance of the trade test conducted on 2/4.5.1992.

12. In the result, the cancellation of the trade test held on 2/4.5.92 in regard to the applicants in OA 82/93 who were also applicants in OA 320/92 is held ~~as invalid~~ for the reasons given in this order. The said cancellation as per the order dated 23.12.1992 in regard to Shri Krishna (Respondent 5 in OA 82/93) and the 5th applicant in OA 84/92 is set-aside. The concerned authority has to publish the result of the trade test conducted on 2/4.5.1992 in regard to Shri Krishna (5th applicant in OA 84/92).

13. The MA and the OA are ordered accordingly.

No costs.

EXHIBIT D-13 TRUE COPIE

Date: 13/12/92 (B) 3  
Court Officer  
Central Administrative Tribunal  
Hyderabad Bench,  
Hyderabad

In the C.A.T.  
Hyd. Bureau

RA 193

in  
MA 72/93

in  
OA 84/92

Review Petition

Filed by —  
N.V. Ramu  
as per file