

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

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O.A.No.1395/94

Dt.-of-Decision:-

1. Abdul Khayum
2. Syed Mohammed Ali
3. T.Venkata Rao
4. N.Rama Rao
5. K.C.V.Ramanaiah
6. Y.Venkata Rao
7. S.Venkaiah
8. Y.Solomaih
9. P.Rama Chandra Rao



.. Applicants.

Vs.

1. The General Manager,  
SC Rly, Rail Nilayam,  
Secunderabad-500 371.
2. Secy, Railway Manager,  
Vijayawada-520 001.

.. Respondents.

COUNSEL FOR THE RESPONDENTS

Mr. C. V. SIRRA RAO  
: Mr. V. RAJESWARA RAO, ADDL. CGSC.

CORAM:-

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

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ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Mr.G.V.Subba Rao, learned counsel for the applicants and Mr.V.Rajeswara Rao, learned counsel for the respondents.

2. The ~~xxxx~~ concise facts of this case are as follows:-

The present case involves the Over Head Equipment Division of the Electrical Branch of the SC Railway. In this Branch there are two main categories of staff. They are 1) Remote Power supply maintenance staff and 2) OHE Maintenance staff. The Artisan and skilled staff such as Fitters, welders, Truck and Jeep Drivers are also pooled under the OHE Maintenance staff. The applicants herein are Lineman coming under OHE Maintenance organisation and the Artisan staff --

included along with the line man category for promotion to the higher grades viz., ~~xxxx~~ Skilled, Highly Skilled Gr-II, Highly

3. A provisional seniority list of Grade-III Lineman including the Artizan staff and Jeep Drivers/Truck Drivers/Motor Trolly Drivers of OHE Staff - TrD Department as on 1-1-90 was published by letter No.B/P.612/II/TrD dated 19-12-91 (Page-9 to the OA). The inclusion of Truck/Jeep Drivers and

along with the Lineman category was protested by those holding the post of Lineman (the applicants herein are Lineman) and a representation was filed in this connection dated 3-1-92 (Page-29 to the OA). No reply appeared

representation. A combined integreted provisional seniority of OHE Lineman Gr-I in the scale of Rs.1320-2040/-(RSRP) (including Ancillary categories) and PSI/RC/Fitter Gr-I in scale of Rs.1320-2040/-(RSRP) was issued by No.B/P.608/II/1/Vol.II. dated 22-8-94 (Page-17 to the OA), calling for objections to that provisional seniority list. That

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was protested by the applicants herein who are Lineman Gr-I by their representation dated 20-9-94 (Page-31 to the OA). In this representation the applicants submitted that Artisan and Ancillary Staff should not be included in the combined seniority list as they are not qualified to carry out the maintenance/Repair works in the OHE. They are also not eligible to be considered for promotion as they are not trained in the work to be performed by the Lineman. It is not clear whether any suitable reply was given to that representation or not. However because of the interpolation of the Artisan and Truck Drivers category in the combined seniority list issued on 22-8-94, the seniority of the 9 applicants herein was brought down as the seniority of the Artisan and other Truck Drivers were shown above the applicants herein.

4. It was proposed to hold the selection to fill up the 11 posts of Chargeman-B in the grade of Rs.1400-2300/- in the Electrical Department and accordingly 33 eligible candidates were ~~altered~~ <sup>but alerted</sup> for written examination/viva-voce by letter No.B/P. 608/II/1/Vol.III dated 8-9-94 (Page-25 to the OA). The category of Staff eligible to appear for the selection included the Tank Wagon Drivers and Artizan category of staff etc. The names of the applicants herein were not included in the list of candidates called for the written examination because of their position lower down in the seniority of the Lineman/Gr-I. This had happened because they had lost some positions while fixing their seniority in the grade of Lineman Gr-III by including and clubbing the Ancillary category in the combined list. The Ancillary categories are Jeep Driver, Truck Driver, Motor Trolley Driver, Turner, Hammerman and Masons etc.

5. The applicants submitted representation dated 29-9-94 (Page-32 to the OA) to stop the selection till the seniority list is corrected by interpolating the names of the applicants herein. But the said representation was reported to be ignored and R-2 issued a letter dated 20-10-94 fixing the date of selection for the post of Chargaeman-B on 19-11-94.

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6. Aggrieved by the above the applicants in this OA filed this application to quash the combined provisional seniority list No.B/P.608/II/1/Vol.II. dated 22-8-94 (Page-17 to the OA), and calling the 33 employees as per letter No.B/P.608/II/1/Vol.III dated 8-9-94 (Page-25 to the OA) and conducting the examination on 19-11-94 by holding those orders as arbitrary, illegal, unconstitutional, violative of Article 14 and 16 of the Constitution and for a consequential direction to the respondents to conduct the selection for the post of Chargeman-B in the scale of Rs.1400-2300/- after drawing a seniority list of Lineman category excluding the Ancillary and Artisan staff of Truck/Jeep Drivers from the technical category of Lineman which is a distinct category by itself.

7. A reply has been filed in this OA. The respondents in this OA submit that the Ancillary staff such as Motor Mechanics, General Fitters and Hammer Man etc., come under Ancillary skilled categories and it is not correct to say that they are not technical. They are certainly skilled artisans staff like Lineman.

Lineman. They are the staff in TRD right from Khalasis in the scale of Rs.750-940/- to high skilled grade or Rs.1320-2040/- on OHE, PSI and RE section.

by the CPO vide letter No.P.529/EL/TRD dated 26-11-86/1-12-86 (Annexure-I to the reply) these ancillary categories of staff shall be clubbed with Lineman.

Rs.950-1500/- for the purpose of progressing to Gr-II in the scale of Rs.1200-1800/-(RSRP) and further to Gr-I in the scale of Rs.1320-2040/- and above ~~the posts of chargedman, the posts~~

filled by Skilled Gr-I in the scale of Rs.1320-2040/- as per the combined seniority. There are two streams in the TRD Organisation one is Power Supply Installation i.e., RSI/KC fitter and the other is OH Equipment i.e., OH Lineman including Ancillary categories. Thus the staff in the Ancillary categories further progressed to the supervisory category to the Electrical Chargeman and above. The avenue chart referred to above dated

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26-11-86/1-12-86 was issued in consultation with the organised labour. In accordance with the avenue chart prescribed by the staff working in the Ancillary categories are interpolated with OHE Lineman for the purpose of seniority and a combined seniority list was published on 19-12-91 and that seniority list is in accordance with the avenue chart for promotion to the post of Chargeman Rs.1400-2300/-. The 9 applicants herein are not senior enough for consideration on the basis of the integrated seniority which was issued on 22-8-94. Hence the written test was to be conducted without calling the applicants herein. ~~XXXX~~ There are no irregularities committed in the issue of the seniority list and the conduct of the examination for the post of Chargeman-R.

8. An interim order dated 17-11-94 in this OA issued. As per that interim order the applicants were allowed for the written test to the above selection. But it is stated only 7 applicants reported for the examination.

9. Before discussing this case it is necessary to observe in regard to the issue of the promotional avenue chart and the jurisdiction of this Tribunal to hear if a challenge is made to the avenue chart. The avenue chart is a scheme of feeder categories who can be called for promotion to the higher grade. The inclusion of the higher grades for which the lower category feeder staff are called is to be determined by the competent official of the department. The inclusion staff in the feeder categories depends on the nature of duties and responsibilities of the organisation and other such important details. The Court/Tribunal cannot dictate them to the departmental authorities either to include or exclude certain categories of staff from the feeder cadre as the Court/Tribunal may not have the necessary expertise for giving such direction. Further it is stated in this OA <sup>that</sup> the avenue chart the OHE department was prepared with the approval of the Chief Electrical Engineer who is the Head of the department in consultation with the recognised Labour Unions and co-ordinated by the Chief Personnel Officer.

Thus from the above procedure it is evident that the avenue charts are prepared not by one individual but by a number of individuals holding the various position and also representing the staff. The staff have got a channel to ventilate their grievance in regard to the inclusion of category in the avenue chart through the recognised union or through their departmental heads before finalising the same. Further also the avenue chart are circulated to the unions provisionally before finalising the same. Thus the safe-guard provided before finalising the avenue chart is sufficient to meet the various objections raised by the concerned employees.

10. In view of what is stated above the avenue chart cannot malafide intention in preparing the avenue chart. As stated earlier the avenue chart is not prepared by one individual. It is decided in totality with the combined wisdom of number of officials and staff union leaders. The staff union leaders normally collect the necessary information from the concerned departmental staff before agreeing to that proposal. Hence imputing malafide ~~in~~ the issue of the avenue chart may not have much substance. Even if one of the officials had malafide intention it will be come out during the discussion with the of avenue chart is very very difficult and cannot be taken in the face value unless a very very strong case is made out on reliable proofs and circumstances.

11. It is to be noted in this case that the player does not challenge the avenue chart. But it only challenges the provisional seniority list dated 22-8-94 and calling of 33 dated 8-9-94 and the letter issued fixing the examination date on 19-11-94. Thus it has to be decided whether issue of those letters are in order or not and no order need be given in regard

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to the avenue chart.

12. A rejoinder by the applicants dated 23-3-97 has been filed in this OA. As per this rejoinder the applicants contend that the avenue chart relied upon by the respondents issued on 26-11-86/1-12-86 (Annexure-I to the reply) is not the correct avenue chart. A compendium of avenue chart of promotion for all departments was issued by the SC Railway in 1990. That the avenue chart for the OHE department is one amongst them. A copy of that was also enclosed. The applicants submit that the avenue chart followed in this connection is 1986 and not the one which was included in the compendium of avenue chart issued in 1990. Thus the respondents has violated the later avenue chart of 1990 in force while issuing the integrated seniority list as well as

13. From the above the point for consideration is to decide the correct avenue chart for promotion in the OHE department. included in the compendium of Rules is to be followed. Thus the issue has come to a decisive position.

14. In the additional affidavit dated 24-4-97 filed by R-2, it is made it clear that the avenue chart issued in the year 1986 is a valid one and has to be followed. We have perused that affidavit. We found that the position has not been explained fully in the affidavit and number of issues are to be resolved. Hence we directed the Chief Personnel Officer to file a detailed affidavit in this connection indicating the correct avenue chart as included in the compendium of avenue chart for promotion. An additional affidavit by the Chief Personnel Officer was filed on 1-5-97. The Chief Personnel Officer has submitted that the avenue chart for promotion published in the compendium in 1990 is not a valid one and in case of doubt the avenue chart of promotion originally issued should be referred to. Thus he submitted that the 1986 chart is the only valid

chart to be followed in this connection. The applicants have filed a rejoinder dated 26-5-97 to the additional affidavit dated 1-5-97. In that they have submitted that the 1986 chart has been reviewed and hence the 1990 chart was issued which was included in the compendium of rules. Thus the applicants submitted that the respondents are following the incorrect avenue chart of 1986 and they should have followed the 1990 chart as incorporated in the compendium of avenue chart of 1990. If that chart is followed then the integrated seniority list issued for promotion to the post of Chargeman-B will get altered and that will enable the applicants to become eligible for consideration for promotion to the post of Chargeman-B.

15. After hearing both the sides it was ordered on 19-06-97

"So far the respondents were maintaining the stand that the avenue chart issued in 1986 is the authentic one and the promotions are made according to that chart. An affidavit in this connection has also been filed by the Chief Personnel Case was taken up today for noting and earlier also we have asked the learned standing counsel to show that the avenue chart in the compendium of rules for this particular category shown as one issued in 1990 has not been approved and that reference to that in the compendium of rules is an inadvertent mistake. To establish that we have also asked the form of noting wherein the avenue chart of 1990 was proposed but has not reached the final approval stage. To that effect no noting was produced. The learned counsel for the applicant only produced a noting wherein orders were given to print the 1990 compendium. That is not a proof to show that the chart included in the 1990 compendium is not there is a note in the compendium stating that if there is any discrepancy in the compendium then authenticated original chart kept on the file only is to be relied upon. Accordingly to that effect a note has been inserted in the compendium. To make position clear only we have asked the standing counsel for the respondents to produce noting initiated but did not reach the final stage.

As stated earlier no such noting was shown. In the meantime the standing counsel for the respondents produced before us the letter No.P(R)529/AVC: dt.5-6-97, wherein it is stated that the compendium of avenue chart issued during 1990 may be treated as withdrawn with immediate effect. The by the Tribunal. Hence the letter dt.5-6-97 is irregular. However we do not pursue further in that connection.

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If the Chief Personnel Officer now submits a sworn affidavit that 1990 chart is the one to be followed and the selection under dispute in this OA will be progressed on the basis of that chart, then we feel that there is no need for further adjudication in this case. Standing counsel for the respondents submits that a sworn affidavit by the CPO, SC Railway will be filed indicating that the avenue chart of 1990 as shown in the compendium will be adhered to for the promotion to the selection in question in this OA in Electrical Department. If such a submission is made, then there is no other points for adjudication in this OA. In that view the OA will become infructuous."

16. In pursuance of the order dated 19-06-97 the Chief Personnel Officer has filed an additional affidavit dated 25-6-97. In that he has stated that the avenue chart included in the compendium of avenue chart issued in 1990 is an error. The avenue chart shows in the compendium 1990 is the one issued in the year 1980 and inadvertently included in the compendium instead of the chart of 1986. The Chief Personnel Officer regretted the error and submitted that the promotion order in accordance with the order dated 19-06-97 be upheld and the OA may be dismissed.

17. We are not satisfied with that affidavit. We still felt that the conclusion that the chart in the compendium was issued in 1980 and that it is inadvertantly included in the compendium of avenue chart of 1990 instead of 1986 <sup>original</sup> chart. Hence we felt that the presence of the Chief Personnel Officer, SC Railway was essential to explain this case fully and to assist the Tribunal. In that view we issued an order dated 27-6-97. That order is reproduced below for

"In pursuance of the direction dt.19-6-97 a fresh affidavit dt.26-6-97 has been filed by the Chief Personnel Officer of the SC Railway. A reading of the present affidavit shows that the avenue chart included in the compendium was issued in 1980 and it was chart. But that statement is wrong as of 1990 the basis of the material available on record. In the earlier affidavit the Chief Personnel Officer has admitted that 1990 chart has not reached the finality because of that only we have asked the Chief Personnel

Officer to show us notings in the file wherein such a chart was proposed but has not reached the finality due to some reason or other. But in the last hearing no such proof was produced. In view of that, the learned counsel for the respondents submitted that they will file an affidavit stating that 1990 chart will be adhered to in the present selection.

But today the affidavit filed has not adhered to that but also states that 1990 chart should be read as 1980 and that the chart issued in 1980 was incorrectly shown as 1990 in the compendium by mistake. As stated earlier, there is no proof for that. It is a bald statement. Right from the beginning when the case was hotly contested for the last 5 to 6 months, the respondents were consistently submitting that 1990 chart is not an authenticated one and the chart shown in the compendium as having issued in 1990 has not reached the final stage. If that be the case, how can this Bench accept the present affidavit which is contrary to the previous statement. Hence we are of the considered opinion that the Chief Personnel Officer, SC Railway should be present before the Tribunal for explaining the position and also to assist the Tribunal to arrive a proper and judicious decision. The learned counsel for the respondents submitted that an officer below the rank of the Chief Personnel Officer may be called for instead of the Chief Personnel Officer. When the Officers below the rank of the Chief Personnel Officer were consistently submitting information which are not in tune with the Officer in his earlier statement has not brought out the points as above mentioned in the present affidavit, we do not feel that it will be sufficient if an officer of the lower rank than that of the Chief Personnel Officer is present before this Tribunal for Chief Personnel Officer of South Central Railway should be present to explain the position clearly and effectively.

When the respondents submitted in the affidavit that it is the chart of 1980 then they should have produced proof to that effect. In our opinion, they have not have produced authenticated chart of 1980 and compared with the chart printed in 1990 to show that both are the same and that the mistake is inadvertant it could be a reliable proof. But unfortunately, no such step was taken by the respondents to produce that chart. In that view also we can get confidence in the submissions of the respondents only by the clarification and explanation to be given only by the Chief Personnel Officer, SC Railway.

In the last hearing the learned counsel for the respondents submitted that they will adhere to 1990 chart in this OA. However that stand has been reversed now. The respondents in our opinion are not briefing the counsel properly. In that view also we feel that before this Tribunal is essential."

18. In pursuance of that above order Mr. Ansari, CPO was present on 8-7-97 and he initially expressed his regrets for

giving incorrect information in the various affidavits filed stating that the avenue chart included in the compendium was not an approved one. Subsequently that stand has to be reversed after checking. The avenue chart issued in 1977 was modified slightly in 1980 and that chart was inadvertently included in the compendium of avenue chart issued in the year 1990. Hence he submitted that the chart issued in 1986 is a current one. He also compared the avenue chart published in the compendium in 1990 with the earliest avenue chart issued in 1977 and submitted that both the charts tally correctly. On that basis he submitted that the chart in the compendium of avenue chart is the one issued in 1980 only and that the chart issued in 1986 should be taken as the current one.

We have asked the Chief Personnel Officer to file an additional affidavit confirming the above. Accordingly an additional affidavit was filed on 28-7-97. We have gone through that additional affidavit. We have also compared the avenue chart of

chart issued in 1990. We found both of them tally with minor variation. The chart of 1986 does not tally with the 1977 chart. Though the applicants submit that the chart in the compendium is the current they have not produced the order by which the chart was introduced as was done in the case of 1986 chart. Hence, we have come to the conclusion that the chart enclosed to the avenue chart compendium issued in 1990 is the one issued in 1977/1980 and that chart has been inadvertently shown as 1990 chart in the compendium. As another chart was finalised with the proper approval in 1986, superseding the earlier charts of 1977/1980 that chart is to be held as a current one for promotion in the one category.

19. The applicants submit that the avenue chart followed in Guntakal Division of SC Railway is the one enclosed to the 1990 chart compendium. Hence the applicants further submit that the submission of the respondents that the chart in the compendium

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was issued in 1977/1980 is not correct.

20. A letter from the Sec'bad Division was shown to us on the day when the CPO was present in the Court stating that the Sec'bad Division which is an extensively electrified division, the 1986 chart was issued. The Vijayawada Division also is an electrified division for considerable route mileage. When both Sec'bad and Vijayawada division are using 1986 chart the submission that the chart used by the Guntakal Division should be taken as a correct is not tenable. Hence we are convinced that the chart of 1986 is the appropriate chart for promotion in the OHE cadre.

21. In view of the above discussion it has to be concluded that the chart issued by the CPO by his letter No. P.529/EL/TRD dated 26-11-86 and that the chart enclosed to the compendium of avenue chart for promotion to other OHE Department in the 1990 compendium is not the proper avenue chart.

22. As the seniority list dated 22-8-94 and the list dated 8-9-94 whereby eligible employees were called for the selection of Chargeman-B in the scale of pay of Rs.1400-2300/- were prepared in accordance with the current avenue chart issued in 1986, those lists cannot be set aside.

23. In that view the OA is liable only to be dismissed. Accordingly it is dismissed. No costs.

24. Before we part <sup>with</sup> ~~of~~ this OA, it is necessary for us to express our unhappiness in the submission of the reply affidavits by the respondents. It has been elaborately indicated in the foregoing paragraphs of the judgement that how the respondents were consistently informing the Tribunal that the 1990 chart though issued was not an approved one. Subsequently, when a thorough probe was made by this Bench, the respondents took some ~~from the correct position~~ stating that the

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chart included in 1990 compendium was actually issued in 1977/1980 and that chart is not a current one. The above could have been submitted initially itself if the respondents have taken care to check the record properly. Reluctance for proper checking of the records and carelessness on the part of the officials of the respondents organisation had resulted in unnecessary correspondence which could have been easily avoided. We urge on the CPO to impress on his officials to take adequate interest while filing the replies and ensure thereby that the cases are disposed of quickly.

प्रमाणित प्रति  
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COURT OFFICER  
Central Administrative Tribunal  
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