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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

CA 224/94

~~and~~

OA.224/94

dated 9-2-95

1. K. Ramaswamy
2. J. Sessaiah

: Applicants

versus

1. Sri Tyagarajan
Chief Personnel Officer
SC Railway, Secunderabad

Divn. Rly. Manager
SC Rly., Hyderabad Divn.
at Secunderabad

: Respondents

Counsel for the applicants

: S. Lakshma Reddy
Advocate

Counsel for the respondents

: N.R. Devaraj
SC For Railways

CORAM

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. R. RANGARAJAN, MEMBER (ADMN.)

J U D G M E N T

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

Heard Sri S.LakshmaReddy, learned counsel for the applicants and Sri N.R.Devaraj, learned Standing Counsel for the respondents.

2. Applicants herein were appointed as Apprentice Chargeman 'B' Grade through Railway Service Commission in the year 1988 along with 33 other candidates. After completion of training they were appointed as regular Chargeman 'B' in the scale of Rs.1400-2300 and posted to Purna. The post of Chargeman 'B' is a Divisionally controlled post. The next promotion post for Chargeman 'B' is Chargeman 'A' in the scale of Rs.1600-2660. The post of Chargeman 'A' is a non-selection post but is controlled at headquarters i.e. at the zonal level of South Central Railway. The promotion to the post of Chargeman 'A' is done by the Chief Personnel Officer in Railways after preparing integrated seniority list of Chargeman 'B' who are eligible to be considered for promotion as Chargeman 'A'.

3. In the year 1989 there were four posts of Chargeman 'A' lying vacant at Purna Loco Shed of Hyderabad Division of South Central Railway. R-2 who was the head of the Hyderabad Division filled up the said posts locally on adhoc basis by promoting the applicants herein as per order dt.20.11.1989 (page-4 of material papers). One Sri Narsaiah who was senior to the ^{applicants} as Chargeman 'B' in Hyderabad Division refused promotion as he had to change headquarters from Lalaguda to Purna. Hence, he opted to remain as Chargeman 'B' at Lalaguda. Hence ^{the} two applicants herein who were junior to Sri Narsaiah were promoted on adhoc basis as Chargeman 'B' and posted to Purna in terms of Office order of R-2 dt.20.11.1989. They are working as such on adhoc basis as Chargeman 'A' from

(11)

from that date onwards.

4. It is stated for the applicants that there were no seniors in the category of Chargeman 'B' as on the date of their promotion in that year in the Division as well as in the Zone comprising of all divisions of South Central Railway except Sri Narasaiah who refused to go on promotion as Chargeman 'A' for his personal problem. It is also stated for the applicants that all their batch-mates in other divisions are promoted as Chargeman 'A' as early as in the year 1988. They represented for regularisation of their services as Chargeman 'A' through representation dt. 22.2.1991 which it is alleged is not replied.

5. In the mean time R-1 by circular dt. 2.9.1993 (page-2 of material papers filed along with OA) called for options from surplus Steam Supervisors in the grade of Rs.1600-2660 and above controlled by the headquarters for absorption in the Traction side in TRS Wing on certain terms and conditions. The applicants herein had also opted and their representations were forwarded to TRS Wing through proper channel on 20.9.1993 before the cut-off date i.e. 24.9.1993. On the basis of the options received, R-1 had prepared list of candidates for screening and for sending them for training and for ultimate absorption in the TRS Wing vide letter dt. 8-2-1994 (page-1 of material papers). The names of the applicants herein were not found in the said list on the alleged ground that their promotions as Chargeman 'A' grade in the year 1989 were purely on adhoc basis and as such they are not eligible to opt in terms of the circular of R-1 dt. 2.9.1993.

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6. The applicants contend that their promotions in the year 1989 were not an adhoc one as they were the senior-most to be promoted to the post of Chargeman 'A' in 1989 itself and their promotions were in accordance with rules and describing their promotions as purely adhoc is not justified. In view of this contention they further submit that the impugned action of the respondents in refusing to permit them for ~~option to~~ TRS Wing is liable to be declared as illegal and violative of Articles 14 & 16 of the Constitution of India.

7. In view of the foregoing facts and circumstances, the applicants have filed this OA praying for declaration that their promotion as Chargeman 'A' grade in the scale of Rs.1600-2660 issued by R-2 in terms of proceedings No.TP/535/Mech.cadre/R&M Sup/HYB/Pt.II dt. 20.11.1989 (page-4 of material papers) in the existing vacancies at Purna ^{with} as regular one and in accordance ~~the~~ rules and for a consequential direction to the respondents to permit the applicants to exercise their option for absorption in TRS wing in terms of R-1's letter dt. 2.9.1993 with all consequential benefits.

8. The respondents in their counter affidavit admit the fact that the applicants were recruited to the Railway as Chargeman 'B' grade in the year 1983 and they were posted to Hyderabad Division in South Central Railway. It is also admitted that they were promoted to the Chargeman 'A' Fitter Grade in the scale of Rs-1600-2660 through proceedings dt. 20.11.1989 of R-2 in the existing vacancies at Purna. But, they ~~alleged~~ that this promotion of the applicants as Chargeman 'A' is not regular but only adhoc one as the posts of Chargeman 'A' is controlled by headquarters and the division has got no authority to fill up those posts on regular basis. In the exigencies of service, if these posts are filled locally by division it is only on adhoc basis to tide over the situation and hence cannot be treated as regular. *D*

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9. Options were called for by R-1 in circular dt. 2.9.1993 for absorption and for permanent absorption in TRS wing in the Rs.2000-3200 only from those surplus steam in the scale of Rs.1600-2660 who are regularly appointed to Chargeman Gr. 'A'. As the applicants are officiating locally as Fitter Chargeman 'A' in the scale of Rs.1600-2660 and their substantive status is only Fitter Chargeman 'B' in the scale of Rs.1400-2300 and as they were not rendered surplus in the Steam cadre, their options for coming over to TRS wing cannot be permitted. It is further submitted for the respondents that even if the applicants are continuing to work as adhoc Fitter Chargeman 'A' from 20-11-1989 onwards they cannot be permitted to come to TRS wing in view of the position as explained above. It is further stated for the respondents that none of the juniors to the applicants who are not duly selected for the post of Chargeman 'A' grade in the steam side were included in the list of candidates for training and further absorption in TRS wing. The applicants herein were not promoted along with their juniors in the year 1987 since they were not found suitable in that year when promotion was for Chargeman 'A' from Chargeman 'B' considered, submits the learned counsel for respondents. No promotion in the category of Chargeman 'A' ordered after 1987 in view of the depletion of steam loco shed and consequent reduction of manpower.

10. No rejoinder has been filed by the applicants for the reply filed by the respondents.

11. The main contention of the applicants herein is that even if there is depletion of the steam locos, the respondents are bound to promote the applicants as Chargeman 'A' if there are vacancies as the work has to be done in the loco sheds. As there were vacancies in the year 1989 in Purna and they

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were senior-most at that time they should/deemed to have
been promoted to that post from the date of their posting
as Chargeman 'A'. In view of this they claim that they are
entitled to training and absorption in TRS wing in terms of
circular of R-1 dated 2-9-93

12. We heard contentions of the rival sides. There
no doubt that there were vacancies in Purna Loco Shed
against which the applicants were posted as Chargeman 'A' on
ad hoc basis. The respondents are right in saying that the
Division has no authority to promote the applicants on regular
basis to the post of Chargeman 'A' and it is only the head-
quarters which should regularise the services of Chargeman 'A'
against the vacancies of Chargeman 'A'. Hence, the contentions
of the applicants that their posting as Chargeman 'A' in terms
of order dt. 20.11.1989 as regular cannot be sustained. But
the applicants cannot be kept on ad hoc basis for years together
without absorbing them regularly in the post of Chargeman 'A'.
So far the posts are existing and the work is being done by them
as Chargeman 'A', it is incumbent on the part of the respondents
to regularise them. If the posts of Chargeman 'A' have
to be rendered surplus subsequently due to loco handling coming
down, ways and means have to be found by the respondents to
absorb them elsewhere in the division as per extant rules. With
this view only circular dt. 2.9.1993 had been issued by R-1.
Even in the circular dt. 2.9.1993 it has been clearly stated
para-2 that calling for options for absorption in TRS wing
not the last option and such options will be called in future
also if required in accordance to the conditions at the time.
It is made clear in that para that those optees
taken later will rank junior to those who are absorbed
of the present circular.

13. From the above statement, it is clear that
possibility of the applicants to come to TRS wing in future
foreclosed if they are made surplus in the steam.
It is clear from the circular that there is even

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options being called for in future also for absorption in TRS wing or elsewhere as and when staff in the steam loco shed are made surplus due to reduction of steam

locos. It is not possible for the respondents to absorb all the staff in the TRS wing at one time especially when steam locos are still in existence and have to be maintained. Just because there was depletion of steam locos, the respondents also cannot deny promotion to the staff or continue them on adhoc basis for long time. The adhoc promotions have ~~be~~ to be regularised in their turn following the extant rules and if they are made surplus in future ways and means have to be found to absorb them elsewhere either in TRS wing or C&W wing or Diesel wing or in any of the posts which the railway administration deems fit. Hence, the contention of the applicants that even if there is depletion of steam locos, the applicants have to be regularly promoted as Chargeman 'A' as they are working against existing vacancies has full force. The respondents cannot continue the applicants herein on adhoc basis indefinitely when there are posts and they are carrying out the duties and responsibilities attached to that post. The reasoning given by the respondents in not holding the selection for the post of Chargeman 'A' in the scale of Rs.1600-2660 after the last selection held in 1987 cannot be held as valid. Hence, a direction has to be given to the respondents to fill up these vacancies existing at present regularly as per rules without any further loss of time. In the selection to be conducted now the eligible candidates in the cadre of Chargeman 'B' have to be considered as per seniority and promote those who ^{found fit} are/in the vacancies of Chargeman 'A' that are existing now. If the applicants herein are senior enough to be considered for promotion as Chargeman 'A' in the vacancies that are existing they have also to be considered and regularise them as Chargeman 'A'.

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14. We have already said that calling for options for absorption in TRS wing issued by R-1 by their circular dt. 2.9.1993 is not a last one. The respondents themselves have stated that options will be called in future also if circumstances demand. In view of the above, the applicants need not have any apprehensions that they may not be asked to opt for TRS wing in future as they were not included in the screening list now. The respondents also submit that none of the junior to the applicants who were not found fit for promotion in 1987 selection have been promoted as Chargeman 'A' superceding the applicants. Learned Counsel for the applicants has stated during the hearing that as no integrated seniority list of Chargeman 'B' was published, the applicants were not in a position to know whether their juniors were promoted or not. The applicants had joined in Railway service in 1983 and are in the know of things regarding the procedure to ascertain their overall seniority position and also the method to ascertain the seniority position if no integrated seniority list is published. Being nearer to the zonal headquarters they could have easily ascertained their seniority position from headquarters when they visit to Secunderabad/Hyderabad area. Being Supervisors of loco shed they had ample opportunity to come to Hyderabad/Secunderabad area. When they were not regularised from 1989 and their representations evoked no response it looks strange as to why no efforts were taken by them to know as to why they were not regularised if they felt that their juniors were regularised earlier. This they failed to do so. But now, when the respondents submitted that none of their juniors were promoted superceding the claim of the applicants for promotion, they come up with this plea at the time of hearing without controverting the submissions suitably with facts by filing a rejoinder. Hence, we are not persuaded by their argument of the applicants.

15. Hence, there is no doubt that the applicant's posting as Chargeman 'A' in Purna is only on adhoc basis and their cases have to be considered for absorption in TRS wing or elsewhere in future/^{even} if they are regularised as Chargeman 'A' now and are made surplus/^{later} due to depletion of steam loco holdings in future. But it is not necessary that the respondents should ~~reconsider~~ ^{to call} for options from the applicants to come over to TRS wing from Chargeman 'A' of steam sheds only if they ^{and call} for option any time when need arises. are made surplus/. If the respondents feel that there is necessity to fill posts in future in TRS wing they can call for options from the Steam staff even if they are not made surplus in steam sheds so as to gradually reduce the strength of staff in steam sheds.

16. It is submitted at the time of hearing, by the learned counsel for the respondents, that the applicants herein have opted to come over as Chargeman 'B' in TRS wing as per their options submitted in the ¹⁹⁹⁴ last week of December/and action will be taken to absorb them as Chargeman 'B' after the screening and undergoing the necessary training. At this juncture when they are due for promotion to Chargeman 'A' as asserted by the applicants if they are taken to the TRS wing as Chargeman 'B' in the grade of Rs.1400-2300 in terms of their option given in the last week of December, 1994, it would cause prejudice to the applicants as they will loose their promotion in the steam side and will be absorbed in a lower category in TRS wing. It is uncertain when they will be promoted to the grade of Chargeman 'A' in TRS wing if they are absorbed as Chargeman in terms of their option immediately without promoting them as Chargeman 'A' against the existing vacancies in steam loco shed. In view of this, it is fair and just if the applicants are continued to have their lien in the steam loco shed and appear for conversion training in the TRS wing as per their option.

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In the mean time when selections will be over for
Chargeman 'A' in the steam loco sheds against the ex-
vacancies, the applicants will be given option either to
come over to TRS wing in the lower grade as per their option
or get promoted if they are selected to the cadre of Chargeman 'A'
in the steam loco shed. The conversion training given to them
will not be wasteful as they have to come one day or other
to the TRS wing when options are called for such transfers
in future as the holding of steam loco sheds is being depleted
due to closure of steam sheds. The above procedure will be fair
and just to the applicants under the present circumstances
who are expecting promotions to the grade of Rs.1600-2660 as
Chargeman 'A' in the steam loco shed, even if they have given
option to come to the TRS wing as Chargeman 'B' in the grade of
Rs.1400-2300.

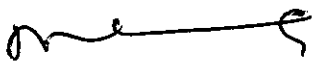
In the above facts and circumstances of the case, the
following directions are given:-

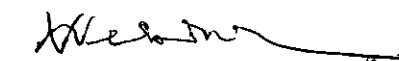
- as on 1-3-95
- (1) ~~existing~~ vacancies in the category of Chargeman 'A'
of Rs.1600-2660 in the Steam Loco Sheds of South
Central Railway have to be assessed by R-1 forthwith. On the
assessment, selection has to be conducted for
candidates regularly from the cadre of Chargeman 'B' of
Rs.1400-2300 found eligible for promotion as Chargeman 'A'
regularly to that grade.

Options are to be called for by the end of December, 1994
for conversion training and absorption in the
 cadre of Chargeman 'A' against the applicants for consi-
deration for promotion as Chargeman 'A' in steam loco sheds
with such consideration. The applicants
in the steam loco sheds and if they
are not selected as Chargeman 'A' in steam loco sheds
they are to continue in TRS wing as
Chargeman 'B' in steam loco shed as Chargeman 'A'.

(iii) The applicants have a right to be absorbed in TRS wing or other wings whenever options are called for in future if the applicants apply in pursuance of such circulars even if they opt to continue as Chargeman 'A' if selected as per item (i) above.

12. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 9th February, 1995.

Grh.


Dy. Registrar (Judl)

To,

1. Sri Tyagarajan, Chief Personnel Officer, South Central Railways, Secunderabad.
2. Sri C. Ramakrishna, Divisional Railways, Hyderabad Division, at Secunderabad.
3. One copy to Mr. S. Lakshma Reddy, Advocate, CAT, Hyd.
4. One copy to Mr. N. R. Devaraj, SC for Railways, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One copy to All Reporters, as per standard list of CAT, Hyd.
7. One spare.

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