

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL AT HYDERABAD.

O.A.No. 313 of 1994.

35

Between :-

R. NAGABHUSHANAM AND OTHERS.

.. APPLICANTS

And

THE CHIEF PERSONNEL OFFICER,
SOUTH CENTRAL RAILWAY, SEC'BAD
AND OTHERS.

.. RESPONDENTS

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS 1 to 4 :

I, K.B.T.Naik, son of Takrya Naik aged 43 years, occupation Senior Divisional Personnel Officer, South Central Railway, Vijayawada resident of Vijayawada do hereby solemnly affirm and states on oath as follows:-

1. I am filing this counter on behalf of all the respondents. I have gone through the averments of paras 1 to 12 of the application and I refute and deny such of allegations made therein save those which are specifically admitted hereunder. The applicants are put to strict proof of the averments which are deemed to be denied.

2. At the outset, it is submitted that the O.A is liable to be rejected as the same is premature. The applicants are questioning the seniority list published on 06-08-1993, which itself is provisional and the employees are called upon to submit their representations in regard to their position in the seniority or any other discrepancy if any within one month therefrom. Admittedly, the applicants have not submitted any representation and hence the O.A. is not maintainable under law as they have not exhausted the alternative remedy available to them.

3. It is further submitted that the O.A is barred by the provisions of limitation as far as the applicants' prayer to declare that the action of the 1st respondent in issuing the letter dt. 3-6-1991 as illegal, arbitrary, unjust and improper is concern. Admittedly, the cause of action to the applicants

ATTESTOR.

K.B.T. Naik
Assistant Personnel Officer G&C
S.C. RLY, VIJAYAWADA

वरिष्ठ मंडल-प्रतिष्ठित अधिकारी

द. DEPOIMENT

Sr. DIVISIONAL PERSONNEL OFFICER
S. C. RLY VIJAYAWADA 2

1991 and they should have questioned the said letter the limitation prescribed under Section 21 of the Administrative Code. Thus their prayer is liable to be rejected for the reasons of the applicants.

4. The brief facts of the case are that respondent No. 5 who was a Gangman under PWI/EE(General), South Central Railway/BZA attended the trade test for the post of Motor/Jeep/Truck Drivers, while he was working as adhoc Lorry Driver under DEE/RE/BZA. Meanwhile he was repatriated to BZA Division to take-up his appointment as adhoc Motor Driver. Subsequently, he was empanelled and temporarily appointed as Truck Driver under the ELS/BZA.

5. It is further submitted regarding fixation of the seniority of Drivers in TRS Department, the second respondent decided to consider them as having entered as Khalasi and accordingly his seniority has been merged with TRS Khalasis. South Central Railway Mazdoor Union in the meeting of permanent negotiating machinery has raised this point and requested to interpolate the seniority of the Drivers with Fitter (RS) Gr.III of TRS Department from the date of their entry in TRS Department.

The 1st respondent has advised to interpolate the seniority of TRS Drivers with Fitter (RS) Gr.III of TRS Department as prescribed in the Avenue Chart. As advised by 1st respondent ~~and another Driver~~ the seniority of the 5th respondent and another Driver in TRS Department has been revised. Against the assignment of seniority of Sri Sk.Rahmtullah and Sri B.Sampath Rao Drivers of TRS Department some of the employees including the applicants 2 to 5 and 7 represented. The representations have been examined carefully and a reply was sent to DEE/TRS/BZA to the effect that the seniority of the drivers is assigned reckoning their services from the date they started working in scale Rs.950-1500(RSRP) in Electrical TRS Cadre and also advised to notify all the representationists accordingly.

ATTESTOR

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Assistant Personnel Officer (C) &
S.C. RLY, VIJAYAWADA

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वरिष्ठ DEPARTMENT, अधिकारी

द. म. वेल्डे, विलयवाडा
Sr. DIVISIONAL PERSONNEL OFFICER
S. C. RLY VIJAYAWADA

6. In reply to the averments of Para 6 (a) of the application it is submitted that the applicants 1 to 7 were appointed as apprentice fitters in the scale of Rs.260-272(RS) which is being revised as Rs.900-940(RSRP) in the Electrical Traction Rolling Stock Department, BZA Division, South Central Railway on 17-7-1980, 3-7-1980, 4-7-1980, 10-7-1980, 3-7-89, 8-7-80 and 13-4-80 respectively. As per the rules the applicants have to undergo training and after successful completion of training the applicants 1 to 3 were absorbed as Fitters (RS) Gr.III in the scale of Rs.950-1500(RSRP) with effect from 8-3-1982, whereas the applicants 4,5 & 6 after completion of training were absorbed as Fitter (RS) Gr.III with effect from 6-5-82. Similarly the applicant No.7 was absorbed as Fitter(RS) Gr.III with effect from 3-9-1982. The date of entry of the applicants in Fitter(RS) Gr.III category will be the date of absorption but not the date of appointment as apprentice Fitter as per rules. The seniority of the applicants 1 to 7 TRS-TRB Organisation of BZA Division will come in force from the date of joining in the working post of Fitter Gr.III.

7. The applicants 1 to 6 were promoted as Fitter(RS) Gr.II with effect from 9-7-1984 and whereas applicant No. 7 was promoted to Fitter Gr.II with effect from 10-10-1984. As per the seniority all the 7 applicants were promoted as Fitter(RS) Gr.I with effect from 4-7-1986. The respondent No. 5 was empanelled and appointed as a Truck Driver alongwith 40 other to TRS-TRB Organisation of Vijayawada Division on the basis of the 2nd The said panel was approved by the second respondent on 2-6-1980, respondent on 02-06-1980 and posting orders were issued on 1-11-80. It is pertinent to mention here that the said panel and posting orders are not at all in dispute. It is further submitted that as per Avenue, the post of Truck Driver in the skilled grade are to be manned from volunteers from among the semi skilled and skilled staff in grade Rs.260-400(RS) having driving licence. Further their promotion to skilled Gr.II will be made on their seniority in the parent unit.

ATTESTOR.

[Signature]
 Assistant Personnel Officer G&C
 S.O. No. VIJAYAWADA

[Signature]
 DEPENDENT अधिकारी

ह. म. रेलवे, विजयवाड़ा
 Sr. DIVISIONAL PERSONNEL OFFICER
 S. C. RLY VIJAYAWADA

: 4 :

8. The averments of para 6 (c) of the application are incorrect, hence denied. The Respondent No. 5 was a permanent employee and worked as Gangman under PWI/EE from 16-8-1975. He also worked as adhoc Lorry Driver from 26-3-1976 under DEE/RE(General)/S.C.Rly./BZA. The 5th respondent was temporarily appointed as Jeep Driver and posted under DEE/TRS/BZA as per the Office Order No. PEC/ELE.6/AT dt. 25-1-1980. The 5th respondent was repatriated back to BZA Division to take up appointment as a driver vide CEE/RE/BZA letter No. E.252/VGRE/3061/1/Vol. III dt. 27-2-1980, subsequently the 5th respondent along with others empanelled for the appointment of drivers as stated supra. The 5th respondent has been retained at ELS/BZA vide Office Order No. PEC/177/80 dt. 1-11-1980.

9. As per the instructions of the 2nd respondent the drivers, who have entered TRS/TRD departments from the cadre of RE Khalasis have to be considered as entered khalasis. They will get their pay as Drivers till they work and progress in their parent line as khalasi and Semi skilled grades. Those who have come from the department other than RE khalasis have been taken as entered in lowest grade of khalasis from the date of their entry in TRS/TRD and progress to the Semi-skilled grade as per their seniority. However they may be given option either to accept the above or to go back to their parent cadre.

10. Accordingly the 5th respondent along with other asked to submit option. The 5th respondent has submitted willingness in TRS pool as khalasi. Hence seniority has been published merging him with khalasis vide Lr.No.B/P.529/II/TR dt. 12-12-1985. In the same letter it is mentioned that he is deemed to have entered as Khalasi with effect from 5-5-1980 (i.e. the date of he joined at DEE/TRS/BZA) as Khalasi Helper w.e.f 01-04-1981 and as Fitter (RS) Gr. III w.e.f 21-05-1984.

ATTESTOR

[Signature]
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Assistant Personnel Officer GAC
S.C.Rly, VIJAYAWADA

DEPONENT

वरिष्ठ मंडल कर्मिक अधिकारी

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Sr. DIVISIONAL PERSONNEL OFFICER
S. C. RLY VIJAYAWADA

11. In respect of averments of para 6 (d) of application it is submitted that SCR Mazdoor Union made a representation to the General Manager, South Central Railway to interpolate the seniority of the drivers with Fitters(RS) TRS from the date of entry of the employees in TRS Department. Accordingly the 1st respondent advised to interpolate the seniority of TRS Drivers with Fitter (RS) as prescribed in the avenue chart vide letter No. P(EL)694/VI/Union/61 dt. 3-6-1991. As advised by the 1st respondent the seniority of the respondent No. 5 along with other drivers has been revised vide letter No. B/P.612/II/TRS/Vol.I dt. 2-1-1993. Interalia CPO(Chief Personnel Officer) also has given clarification regarding seniority of Jeep Drivers etc., of TRS/TRD Department of Bezawada Division vide letter No. P(EL)/694/VI/Union/61 dt. 1-4-92 & 13-4-92. In response to the revision of said seniority of 5th respondent Truck Driver and Sri B.Sampath Rao, Jeep Driver published vide Sr.DPO/BZA Lr.No.B/P.612/II/TRS/Vol.1, dt. 2-1-92, some of the employees including the applicants 2,3,4,5 & 7 have appealed against the revision of seniority of the respondent No. 5 and Sri B.Sampath. The representations have been examined carefully and advised employees through DEE/TRS/BZA vide Lr.No. B/P.612/II/TRS dt. 27-4-92 stating that the seniority of the Drivers is assigned reckoning their service from the date they started working in scale Rs.950-1500(RSRP) in Electrical TRS cadre and also advised to notify all the representationists accordingly.

As per the avenue the 5th respondent was promoted as Fitter (RS) Gr.II and then as Fitter (RS) Gr.I and accordingly his seniority position was shown at 16(a) in the seniority list of Fitter(RS)Gr.I published vide Memorandum No.B/P.612/II/TRS/Vol.1 dated 06-08-1983.

The applicants 2 to 5 & 7 have represented against the assignment of seniority of the 5th respondent along with other employees vide their representations ~~have been disposed~~ dt.20-1-92 but not 3-9-92 as contended by them. The said representations have been disposed of and communicated to DEE/TRS/BZA with a request to notify all the representationists as stated above.

ATTESTOR

[Signature]
Personnel Officer GAO
VIJAYAWADA

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DEPARTMENT
Sr. DIVISIONAL PERSONNEL OFFICER
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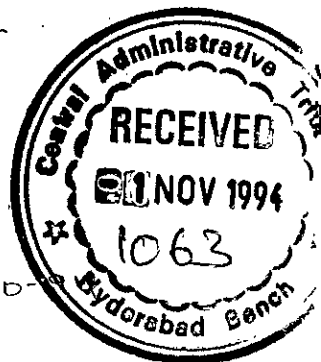
The Chief Personnel
Officer, S.C. Railways
Secbad & others --- Respondents.

Counter filed by the Respondents.

recd counter on 14/2/95

K. Ramesh
(K. Ramesh BAO)

Filed by 31-10-



Filed by:-

Gouri Shanker Sanghi
Advocate.

E. S. S. S. S.
9/11/94

May be filed
as
1/11/94