

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH: AT
HYDERABAD

O.A.No. 1005 OF 1995.

Date of Order: 21-4-1998

Between:

1. M.S.Raja Rao.
2. Shaik Ameer Hamza.
3. K.Satyanarayana.
4. K.Krishna Murthy.
5. N.Sasidharan.
6. V.V.Subba Rao.
7. K.Anandam.
8. P.LakshmiPathy.
9. G.Srinivasa Rao.
10. S.S.Sundaram.
11. K.Sai Prasad.
12. B.Kasumaiyah.

and

1. Union of India, represented by General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
3. Divisional Railway Manager, (Broad Gauge), Secunderabad Division, South Central Railway, Opp: Rail Nilayam, Secunderabad.

.. Respondents

CCUNSEL FOR THE APPLICANTS :: Mr.G.Ramachandra Rao

CCUNSEL FOR THE RESPONDENTS:: Mr.D.R.Paul.

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

AND

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: O R D E R :

(PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J))

Heard Sri G.Ramachandra Rao, the learned Counsel for the applicant and Sri D.R.Paul, the learned Standing Counsel for the Respondents.

2. This is an application under section 19 of the Administrative Tribunals Act. The application was filed on 18-8-1995.

3. The facts giving raise to this O.A. may, in brief, be stated thus:-

a) There are 12 applicants in this O.A. They are working as Diesel Assistants in the scale of pay of Rs.950-1500 (RSRP) Sec'bad (Division) South Central Railway, Secunderabad. They are all Ex. Servicemen.

b) The Railway Recruitment Board invited applications for filling up the post of Apprentice Fireman 'A' in the South Central Railway through the Advertisement No. 1/86 issued by the Railway Recruitment Board. The applicants submitted their candidature to the said post. They submit that they were selected as Apprentice Fireman 'A' after subjecting them to written and viva-voce test and Psychological test during 1987. It is submitted that the Railway Recruitment Board took considerable time to inform the applicants about their selection. They were informed of their selection by the Railway Recruitment Board through its letter dated: 29-6-1988.

c) The respondent no. 2, vide Proceedings No. CP/354/Apprentice offered the post to the applicants Fireman 'A' under the stipendary scale of Rs. 900-920 plus Allowance during the training period and were directed to execute a Bond in favour of the Railway Administration in the prescribed form. They accepted the post offered.

d) They submit that they were appointed as Apprentices in Fireman 'A' during May, 1989 on completion of the training for a period of two years. They were absorbed on regular basis against the working posts of Fireman 'A' / 1st Fireman in the gr....., 3

of pay of Rs.950-1500(RSRP), vide office Order No.39/ELR/1991, dated:21-6-1991(A1) issued by the respondent no.3 and were posted as Diesel Assistants.

e) They submit that on the basis of the recommendations of the 1Vth Pay Commission which came into effect from 1-1-1986 the category of Firemen 'A' was redesignated as Grade-I and Fireman 'B' and 'C' were merged into one category and were redesignated as Fireman-Grade-II.

f) They submit that as per the promotion Avenue Chart and as per IREM, the post of Firemen 'A' to be filled as follows:-

"i) 50% of the vacancies of Fireman "A" have to be filled from amongst Fireman 'B' who have studied upto 8th class and who are below 45 years of age, on the basis of selection.

ii) The remaining 50% of the vacancies of Fireman 'A' have to be filled from amongst Fireman 'B' and Fireman 'C' who are matriculates and who had 3 years of service, on the basis of selection."

iii) By Direct Recruitment if there are no sufficient number of candidates under clause (ii) above."

g) In view of redesignation and merger of the post the rules relating to the filling up the post Fireman 'A'/Ist Firemen were amended with effect from 3-11-1987.

h) After the amendment, the post of Firemen 'A'/Firemen-Grade-I in the scale of pay of Rs.950-1500 Plus(RSRP) has to be filled by promotion from among Second Fireman/Firemen-Grade-II

In the scale of pay of Rs.825-1200(RSRP), (i) by the process of selection without restriction regarding age or qualification and shortfall, if any, will be made good; (ii) by the process of direct recruitment through Railway Recruitment Board.

(i) They rely on the Para.215 of the IREM. They submit that the staff for the immediate lower category/grade with a minimum qualifying service of two years will be eligible for consideration for promotion. The selection process included written test/viva voce test. They submit that the viva-voce test is compulsory. Selection to be made by the competent authority on the basis of the recommendations of the Selection Board detailed in Para.216 of the IREM.

(j) Para.216 of the IREM further states to avoid adhoc promotions as far as possible both in selection and nonselection posts and in case of exigencies adhoc promotions could be resorted only sparingly for a short duration of 3 to 4 months.

(k) While the applicants were undergoing training, they submit that the respondent no.3 resorted to filling up the post of Firemen'A' by promotion on adhoc basis and continued the adhoc promotions indefinitely. They submit that those who were promoted and appointed as Fireman'A' on adhoc basis were not eligible and had not put in the required years of qualifying service in the lower grade.

(l) They submit that the respondent no.3 by his Proceeding No.7/ELR/92/dated:21-1-1992 (CP/563/P11/1/Diesel Assts) regularised the services of 205 employees who were working as Firemen/1st Firemen on adhoc basis. The respondent no.3 published the seniority list of 'Fireman'A' as on 30-8-1991. It is submitted that those adhoc promoted were shown as senior.

direct recruits. The direct recruits submitted a representation. It is submitted that the applicants who happened to be direct recruits also submitted their objections to seniority list. Thereupon, the R.3 issued a revised seniority list dated:15/16-9-1993 placing the direct recruits of Fireman 'A' / 1st Firemen above the promotees. It is submitted that the seniority list did not contain the names of the applicants and the direct recruits of subsequent dates.

(m) The applicants submit that on 11-8-1994 they submitted a representation to the respondent no.3 against regularisation of 205 adhoc promotees. The same was rejected, vide his Proceedings No.CP/529/IEM/SEL, dated:30-9-1994.

(n) In the meanwhile, the promotees approached this Tribunal in O.A. No. 441 of 1994 assailing the seniority list dated:15/16-9-94. On 16-12-1994, the Tribunal disposed of the O.A. giving directions to the respondents to prepare a seniority list afrest in the light of the observations made by this Tribunal.

(o) In compliance with the directions of this Tribunal in O.A. No. 441 of 1994, the respondent no.3 prepared a provisional seniority list dated:28-7-1995 (Page.11 to the OA). They submit that the said seniority list was not in full and complete as the names of direct recruits for the years 1991, 1992, 1993 and 1994 were not included in the said seniority list. Further, they submit that ranking given to the applicants in the seniority list was also incorrect. They submit that all the adhoc promotees whose services were regularised with retrospective effect from 4-3-1991 without subjecting them to selection process were enblock showed as seniors to the applicants in the said seniority list. Though the respondent no.3 invited objections to

provisional seniority list, it was only a formality and the 3rd respondent published the seniority list purporting to be in compliance with the directions of this Tribunal in CA.no.441/1994. However, they submit that they made another representation, dated: 7-8-1995 against the same.

(p) Their next promotional avenue is to the post of Diesel Drivers in the grade of 1350-2200(RSRP). The post of Diesel Drivers is not a selection post and it has to be filled by promoting the eligible Diesel Assistants in accordance with the rules after successful completion of pre-promotional training course.

(q) They submit that the 3rd respondent by his Proceedings No.3/P/Hyderabad/P.11/2, dated: 24-7-1995 deputed the applicants for pre-promotional training course as Diesel Drivers. While they were undergoing training, they were recalled by the respondent no.3 without assigning any reasons whatsoever.

(r) The applicants state that inasmuch as the Employment Notice No.1/86 was issued by the Railway Recruitment Board, South Central Railway inviting applications for recruitment of 24 posts of Apprentice Fireman'A' reserved for Ex.Servicemen was in continuation of the Employment Notice No.1/85. They are entitled to reckon their seniority in the category of Apprentice Firemen'A' /Diesel Assistants on par with direct recruitments of 1/85 Batch and the principles laid down by this Tribunal in CA.no.441 of 1994 for reckoning the seniority of direct recruits are applicable to them.

(s) The applicants apprehend that the R.3 is contemplating to depute certain Diesel Assistants to undergo training in pre-promotional training course as Diesel Drivers ignoring the seniority of the applicants.

(t) Hence they have filed this O.A. praying to call for the records relating to impugned seniority list No.CP/371/ELR, dated 28-7-1995 in the category of Diesel Assistants and issue orders or directions to the respondents herein to reckon the seniority of the applicants in the category of Diesel Assistants after the last direct recruit viz., Y.Ramesh with all consequential and attendant benefits.

4. In the reply the manner of the recruitment of the applicants to the post of Diesel Assistants is not disputed. They submit that the Rule 217 of the IREM empowers the General Manager to relax the recruitment rules whereby the selection can be dispensed with if the relevant recruitment prepared selection has the mode of consideration for promotion. It is submitted that as no Fireman 'A' was available as on 3.11.1987, the date on which the amendment came into force, and the fact that direct recruits who were selected as Fireman 'A' upto 3.11.1987 were still undergoing the training. In the exigencies of the services, certain adhoc promotions were given for those employees possessing the requisite qualification and age etc., as required for such promotion. Accordingly, the direct recruits who had put in 3 years service were regularised with effect from 4.3.1991, they were taken into consideration for the purpose of preparing the seniority list of Diesel Assistants.

5. They submit that the contentions of the applicants raised in this O.A. has already been examined by this Tribunal in O.A. No.441 of 1994. They rely on the observations made by this Tribunal in Para-24, page 16, para-41 page 27 of the judgment, wherein it was observed that it was open to the General Manager to dispense with the selection for promotion. The applicants, however, have not raised any objections when their names were not shown in the revised seniority list dated 16.9.1993 nor approached this Tribunal for redressal.

6. They further submit that the applicants did not raise any objections when their names were not shown in the revised seniority list dated 16.9.1993, that moreover the seniority list dated 16.9.1993 was challenged before this Tribunal in O.A.No.441 of 1996 that this Tribunal while disposing of the said O.A. gave certain directions to prepare afresh the seniority list; that in accordance with the guidelines, the provisional seniority list dated 28.7.1995 has been prepared; that the applicants were appointed as Apprentice Diesel Assistants during the year 1989 and after successful completion of the training for a period of two years they were absorbed as Diesel Assistants with effect from 30.8.1991; that in view of the principle laid down by the Hon'ble Supreme Court of India in the case of Direct Recruits Class-II Engineering Officers Association vs. State of Maharashtra (reported in 1990(2) SLR 769) the ad hoc promotee seniority has to be reckoned from the date of ad hoc promotion and that this Tribunal followed the principle laid down in the case while giving directions in O.A.No.441 of 1994 in para 24 at page 16; that this Tribunal in para 41 at page 27 held that the inter se seniority of promotees and the transferees from the Hyderabad Division to Secunderabad Division to Secunderabad Division to be considered as promotees only; that in accordance with the decision of the Hon'ble Supreme Court since the seniority of promotees has to be reckoned from the date of their ad hoc promotion which was prior to 1991 that means, much earlier than the absorption of the applicants in the cadre; that the applicants cannot claim seniority above the promotees and the transferees; that the seniority list dated 28.7.1995 was published only in accordance with the directions given in O.A. No.441 of 1994; that it is only a provisional seniority list; that after disposal of the representations, if any, the seniority list will be finalised; that the applicants were correctly

placed in the provisional seniority list as per the date of their regular appointment; that naturally the promotees whose ad hoc promotions were regularised with effect from 4.3.1991 with the approval of the Competent Authority were placed above but the applicants are regularly absorbed with effect from 21.6.1991; that the applicants submitted a representation dated 7.8.1995; that the same is under consideration; that after the recruitment rules of Diesel Assistants were amended effective from 3.11.1987, the direct recruits who were recruited in the vacancies which had arisen and also completed the training after the promotees became eligible for promotion as per the amendment dated 3.11.1987; that therefore the question of inter se seniority of direct recruits and promotees had arisen; that however, the applicants were recruited as Apprentice Trainees in the year 1989; that after completion of two years training they were regularly absorbed effective from 21.6.1991; that the applicants' appointment was subsequent to the selection and promotion of the promotees; as such they rank junior to the entire direct recruits and the promotees. They further submit that all the Diesel Assistants had to undergo the Goods Drivers Pre-promotional Course successfully to get themselves become eligible for the promotion to the post of Goods Drivers in the scale of pay of Rs.1350-2200(RSRP); that the pending finalisation of the provisional seniority, a training programme was received to depute the employees for training; but however, in order to avoid wastage of training facilities, the applicants who were erroneously sent for training were reckoned; that the applicants were absorbed during the year 1991 and they are still employees who were absorbed earlier to the applicants; that the applicants being juniors cannot be deputed for pre-promotional training earlier than their seniors and that there are no merits in

this O.A. and the O.A. is liable to be dismissed.

7. The controversy that has arisen in this O.A. is the inter se seniority dispute between the direct recruits, the promotees and the transferees from Hyderabad Division in the grade of Fireman 'A' /Ist Fireman. It is an admitted fact that the applicants are direct recruits in response to the advertisement No.1/86 issued by the Railway Recruitment Board, Secunderabad. No doubt, there was some delay in completing the selection process. Even though that advertisement was issued in the year 1986, the applicants who were selected were absorbed in the cadre only from 21.6.1991. There is little variation between the date of regularisation of the applicants. The applicants submit that they were absorbed in the cadre of Fireman 'A'/Ist Fireman effective from 21.6.1991 after completion of the two years training. However, the respondents in page 3 of their reply state that they were absorbed on 30.8.1991. Further at page 4 the respondents state that the applicants were regularly absorbed with effect from 21.6.1991. The respondents may verify the actual date of the absorption of the applicants in the cadre of Fireman 'A'/Ist Fireman. Besides, certain employees who had already undergone training were transferred to Secunderabad Division from Hyderabad Division to work as Diesel Assistants.

8. It is to be noted that the earlier the respondents had prepared the seniority list dated 16.9.1993. However, the said seniority list was challenged by the promotees in O.A. No.441 of 1994. This Tribunal while deciding the O.A. gave certain directions to the respondents to prepare a fresh seniority list, and on that basis the respondents have prepared a provisional seniority list dated 28.7.1995 which is the subject matter of this O.A.

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the only direction that can be given in this O.A. to the respondents is to finalise the provisional seniority list dated 28.7.1995 after taking into consideration the representations/ objections, if any filed by the affected persons.

15. The applicants were deputed for pre-promotional training and were suddenly recalled. This is also one of the grievances of the applicants. The respondents in their reply stated that the applicants were erroneously deputed for training for pre-promotional course and when they found the mistake they recalled. We find no illegality in this aspect of the matter. When there are seniors to the applicants who are to be deputed for pre-promotional course, the applicants cannot claim priority over the seniors.

16. Hence in view of the facts and circumstances, we find that the applicants cannot have priority over the others who are seniors to them and they can claim for deputing them to pre-promotional course on their term.

17. In this view of the matter, we issue the following directions :-

- (i) The respondents are hereby directed to finalise the provisional seniority list dated 28.7.1995 in accordance with the directions issued in the O.A.No.441 of 1994 ;
- (ii) The respondents are directed to consider the representation dated 7.8.1995 of the applicants and others and place the applicants at an appropriate place as indicated in para-10 of this order while finalising the seniority list; and
- (iii)

(iii) Time for compliance is four months from the date of receipt of a copy of this order.

18. With the above directions, the O.A. is disposed of. No order as to costs.

प्राप्ति प्रति
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Central Administrative Tribunal
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HYDERABAD BENCH

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27/4/98
केन्द्रीय प्राधिकारी (व्यापिक)
Court Officer (Dy. Registrar (J))