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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.162 of 1995

DATE OF ORDER: November, 1997

BETWEEN:

1. T.SIVASANKARAN
2. P.SRILNIVASULU
3. N.VIJAYAKUMAR,
4. I.RAMACHANDRA RAO,
5. Md.HUSSAIN,
6. S.CHANDRA RAJU,
7. P.MANOHARAN,
8. M.OBAIAH,
9. Sk.MAHABOOB BASHA,
10. B.SUBRAMANYAM,
11. M.YESURATHNAM,
12. S.BADE SAHEB,
13. N.RAJENDRAN,
14. D.BALASUBRAMANYAM REDDY,
15. N.VASUDEVA RAO,
17. D.KRISHNA MURTHY RAJU,
18. N.DEVAPRAKASAM,
19. P.KRISHNAIAH CHETTY,
20. Sk.KHADER BASHA,
21. Sk.NOOR BASHA.

.. APPLICANTS

AND

1. The General Manager,
South Central Railway,
Secunderabad,
2. The Chief Personnel Officer,
S.C.Railway, Secunderabad,
3. The Divisional Railway Manager,
S.C.Railway, Guntakal,
4. The Sr.Divisional Personnel Officer,
S.C.Railway,
Guntakal.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.S.RAMAKRISHNA RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWAR RAO, Adl.CGSC

Contd....2

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

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

JUDGEMENT

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

the applicants and Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

2. There are 21 applicants in this OA. They were initially appointed as Loco Khalasis under the 3rd respondent and were promoted to Engine Cleaners and further promoted to Fireman-C grade. While they were working as Fireman-C Grade, volunteers were called for filling up the post of Fireman-A Grade through the departmental selection within the 50% quota earmarked for promotees as per paras 136, 137 and 138 of Indian Railway Establishment Manual, Volume-I, 1989 Edition. 65 candidates were alerted to be in readiness to attend the written examination for filling up the post of Fireman-A in the scale of pay of Rs.290-350 through the departmental examination by the memorandum No.TO/P.531/III/FMA dated 3.5.85 (Annexure-II at page 16 to the OA). By the letter No.G/P.608/III/FMA dated 23.6.85 (Annexure-III at page 19 to the OA) various units under the Guntakal Division were instructed to relieve the candidates included in that letter for the written examination to be held at 10.00 hours on 7.7.85 at Railway High School, Telugu Medium, Guntakal. On the basis of the written



examination conducted on 7.7.85 for promotion to the post of Fireman-A in the scale of pay of Rs.290-350 against 50% quota reserved for Matriculates from among Fireman-B and C, a list of employees who were declared as passed was issued by the memorandum No.G/P531/III/FM'A' dated 6.8.86 (Annexure-V at page 22 to the OA). It is indicated in that letter that interview will be advised separately and the

interview at short notice. Most of the names of the applicants in this OA figure in that letter dated 6.8.86. On the basis of the interview held on 25.8.86, a panel of names to fill up 50% vacancies of Fireman-A reserved for Fireman-B and C on the basis of the selection was circulated by the letter No.G/P.531/III/FM'A' dated 4.9.86 (Annexure-VI at page 23 to the OA). Most of the names of the applicants in this OA figure in that list. All of them were brought under the category of "Other than outstanding". By the letter No.G/P673/III/12/DA/Vol.II dated 15.9.86 (Annexure-VII at page 24 to the OA), the names of the applicants included in that list were instructed to report to the Chief Instructor, DTS/GTL on 22.9.86 without fail for Conversion Course at DTS/GTL.

3. Inspite of their having been selected and sent for training, they were not given regular posting as Fireman-A and were not posted as Diesel Assistants/Assistant Electrical Drivers whereas their juniors and those who have not qualified in the selection were given posting of Fireman'A'/Diesel Assistant/Assistant Electrical Driver/Asistant Driver ignoring their claims, submit, the applicants. Office Orders issued as above are enclosed to

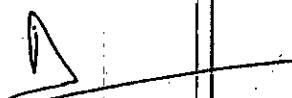
the application. The applicants have submitted representations for posting them regularly as Fireman-A/Diesel Assistant/Assistant Electrical Driver but it is stated that none of those representations had seen ^{the} light of the day. In Para 5(8) at Page 11(a) of the OA, the applicants submit that a provisional seniority list of Diesel Assistants vide memo dated 13.4.93 was issued in ~~all other~~ Diesel Assistants and Traction Assistants. While this seniority list was subsisting, another seniority list was issued on 19.12.94 changing the seniority of the applicants herein. Finally on 21.5.96, the 3rd respondent had issued ~~an~~ altogether a different seniority list making the applicants herein far juniors to others by placing 60 officials above the applicants herein in violation of the rules in force.

4. The applicants further submit in the OA that they have been trained as Diesel Assistant Drivers as back as 5.11.86 and did not function as such till the date. Hence they should be considered for promotion on the basis of the training duly maintaining their seniority in preference to their juniors.

5. This OA is filed praying for a direction to the 3rd and 4th respondents to consider the applicants for promotion to the post of Driver duly absorbing them as Diesel Assistant Drivers from the date they were trained as Diesel Assistant Drivers i.e., 22.11.86 with all consequential benefits.

6. A reply has been filed in this OA. The sequence of events which led to the applicants to send for training

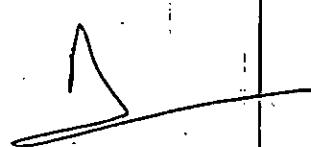
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of Fireman-A way back in 1986 was not denied. However, the respondents submit that the applicants herein could not be posted as Diesel Assistants in view of the Railway Board's letter No. PC-IV/86/06/651/1 dated 24.9.86 (a copy of which has been filed as Annexure R-II to the reply). They submit that in case where two or more existing scales of pay A and B or A, B and C have been merged into a single scale of pay "X" selections and promotions from existing lower scale to the existing higher scale should not hereafter be made. Promotions from the existing lower scales to the existing scale A should like wise cease. Further, in such cases action on selections etc. already in process should be stayed and the panels/suitability lists already existing should not be operated any further. Hence the applicants could not be posted as Diesel Assistants immediately after completion of the Diesel Assistants Conversion Course. However, they could be posted as Diesel Assistants from 25.11.87 after implementation of complete instructions of the Railway Board's letter referred to above.

7. The relevant paragraph 3 of the said Railway Board's letter No. PC IV/86/06/651/1 dated 25.9.86 is reproduced below:-

"The Board also desire that in cases where two or more existing scales of pay 'A' and 'B' or 'A', 'B' and 'C' have been merged into a single scale of pay 'X', selections and promotions from the existing lower scale to the existing higher scale(s) should not hereafter be made. Promotions from existing lower scales to the existing scale 'A' should



likewise cease. Further, in such cases action on selections etc., already in process should be stayed and the panels/suitability lists already existing should not be operated any further".

8. The respondents also enclosed some Annexures to sustain the contention that none of the records to the applicants have been promoted as Diesel Asistants from II-Fireman i.e., Fireman-C to the higher scale and hence the submission of the applicants is not borne by the ~~facts~~. They further add that the panel for Fireman-A published by the Office Order dated 4.9.86 was treated as cancelled in view of the Railway Board's instructions extracted above and hence the applicants cannot claim seniority over the Fireman-B who are in the higher grade than those of the applicants. Moreover, Fireman-B Grade i.e., in the scale of pay of Rs.260-350 and the Disel Assistants in the pay scale of Rs.290-350 were merged into a single scale of Rs.950-1500 ~~in~~ ^{as per} the IV Pay Commission recommendation and hence the applicants cannot claim that they are seniors to some of the employees mentioned at paragraph 7 to the reply.

In a nut shell, it is to be construed that the scale of pay of Rs.260-350 and Rs.210-270 II-Fireman in the scale of pay of Rs.825- Pay Comission's recomendation and as such being treated as I-Fireman subject to the election under Rule 215 of Indian Railway, Volume-I is not possible.

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Establishment

fication issued calling for volunteers for vacancies against 50% quota is not enclosed

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likewise cease. Further, in such cases action on selections etc., already in process should be stayed and the 'suitability lists already existing should not be opened.

8. The respondents also enclosed some of the Annexures to sustain their contention that none of the juniors to the applicants have been promoted as Diesel Asistants from II-Fireman i.e., Fireman-C to the higher scale and hence the submission of the applicants is not borne by the ~~facts~~ ^{reals}. They further add that the panel for Fireman-A published by the Office Order dated 4.9.86 was treated as cancelled in view of the Railway Board's instructions extracted above and hence the applicants cannot claim seniority over the Fireman-B who are in the higher grade than

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9. Firemen shell, it is to be construed that the
were treated as scale of pay. 1200 in the IVth
the applicants being treated as I-Fireman subject to the
positive acts of selection under Rule 215 of Indian Railway
Establishment. 11, Volume-I is not possible.

10. The notification issued calling for volunteers for filling up the vacancies against 50% quota is not enclosed

to the OA which will indicate the number of posts to be filled for which the notification was issued and the communal break up. Even the respondents have not enclosed the notification with their reply. Thus, the number of vacancies earmarked for the above said 50% quota for Fireman B and C with certain educational qualification for promotion on the basis of the examination and selection is not known. The number of vacancies may include the ~~vacancies arising earlier~~ and those vacancies arising which are to be filled earlier to 25.9.86. If there are vacancies as above earlier to 25.9.86, the date of issue of the Railway Board's letter, then the respondents cannot deny the posting of the empanelled candidates at least against those vacancies and give them seniority from the date of their completion of ~~vacancies arising earlier~~ to 25.9.86. Above is also the view taken by the Cuttack Bench of this Tribunal reported in (1991) 17 ATC 904 (S.K.Baliar Singh V. Union of India and others). It was held in that reported case that the guidelines containing new eligibility criterion are not applicable to selection made prior to coming into effect of such guidelines. A similar view was also taken by the Patna Bench of the Tribunal reported in (1994) 28 ATC 677 (Nagendra Ram v. Union of India) in a selection of Assistant Personnel Officers.

11. The respondents have failed as stated above to enclose the notification indicating vacancies and the period when those vacancies will occur, in the reply given to the selected candidates. Further the respondents have also not enclosed any details showing the reasons while

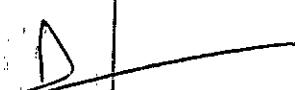
scrapping of the selection list. Now only in the reply they stated that it was necessitated because of the issue of the Railway Board's letter dated 25.9.86, the relevant paragraph of which has been extracted above. It is a normal administrative procedure that whenever a select list has been scrapped, due notice has to be given to the selected candidates so that their views will also be taken note of before cancellation of the select list. If such a cancellation notice is not given, cancellation of the select list should be treated as violative of principles of natural justice. The view expressed by us here is also the view of the Ernakulam Bench of this Tribunal in the reported case in (1991) 15 ATC 529 (K.Sivan v. Station Director, All India Radio) and the Calcutta Bench of this Tribunal reported in (1990) 14 ATC 631 (Ujjal Kr. Chattopadhyay v. Union of India). In those two judgements, it was held that "cancellation of the select panel without assigning any reasons and without affording opportunity to the selected candidates is violative of principles of natural justice". The fact that no notice was given to the selected candidates included in the panel dated 4.9.86 before cancelling that select list cannot be treated lightly.

12. The applicants in this OA could have challenged the posting of their juniors as adhoc Fireman-A/Diesel Assistants when their names did not figure in the select list. They failed to do so. Even the Railway Board's notification dated 25.9.86 which is the cause for cancellation of the select panel is not challenged by the applicants. When the merger of the cadres A and B or A, B and C was stipulated by the Railway Board's letter and

because of that the grade of Fireman was classified into only two categories namely Fireman-I and Fireman-II which resulted in the cancellation of the panel of Fireman-A in which the applicants were included, the applicants should have resisted the cancellation of that list stating that the Railway Board's letter should be given prospective effect, after the select panel in which the names of the applicants figure is exhausted. But it appears that the applicants had taken no such action. Though they submit that they have represented their cases, those representations did not see the light of the day. If they had not received any reply within the stipulated time then they should have approached the judicial forum for redressal of their grievances. *But ...*

13. The applicants submitted in Para 5(8) of the OA that though their seniority was shown correctly in the provisional seniority list issued vide memo dated 13.4.93 their position was brought down by placing 60 officers above them in the seniority list dated 25.5.96. It is not understood whether any notice was issued to them before altering their seniority position. It is also not known whether the provisional seniority list before issuing the final seniority list on 25.5.96 was issued or not. Both the respondents and the applicants are very silent in regard to these details.

14. When the grades of Fireman A and B or Fireman A, B and C were merged and the two grades of Fireman I and II were formed in view of the Railway Board's letter dated 25.9.86, the respondents should have issued a suitable



provisional seniority list after merger calling for objections from the employees of that seniority unit. Had that been done, probably the applicants could have responded suitably by filing their objections before finalising the seniority of the Fireman II and I. In that case, the applicants could have seen their seniority position before complaining that their juniors and those not empanelled have been promoted as Fireman-A/Diesel Assistants/Assistant Electrical Driver etc. But it appears that the respondents have not issued any seniority list of Fireman-I and II after introduction of the Railway Board's letter dated 25.9.86. Hence this has created a lot of confusion in this case.

15. From the above analysis, it is evident that both sides have not taken action as required under the relevant rules to protect their interest. When there was lacuna on both sides, the direction that has to be given in this OA is to balance the interest of both the sides. Further, there may be many employees who would have gained because of the Railway Board's letter dated 25.9.86 in their career. Those employees are not parties ^{to} in this OA. Their interest also should be protected to the extent possible while giving any direction in this OA.

16. Considering the above facts and circumstances of this case, the applicants can ask for promotion to the post of Fireman-A/Diesel Assistant/~~Diesel~~ ^{Electrical} Assistant Driver on the basis of the select list dated 6.8.86 only to the extent of filling up the notified vacancies as existing on the date of notification and those vacancies arising before the issue of the letter dated 25.9.86 i.e., the date of

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issue of the Railway Board's letter No. PC IV/86/06/651/1 dated 25.9.86. Their seniority to the extent of eligible candidates as above should be fixed on the basis of passing the departmental examination held after the training in terms of Rule 215 of Indian Railway Establishment Manual, Vol.I. To that extent, the applicants in this OA can hope for regularisation as Diesel Assistant/Fireman-A/Traction Assistant and they should be shown as having promoted to that cadre from the date indicated above. It may be possible that on the basis of the above seniority, some of them would have acquired the status required for consideration to the higher post. If so, they should also be considered for those posts in accordance with law. If promoted to the higher post, naturally their pay has to be fixed with retrospective effect notionally from the date their juniors were promoted to the higher grade and they have to be given the actual pay from the date of issue of this judgement. Payment of arrears as given above is necessitated because of the fact that the applicants have requested for amendment of the pleadings in the OA as seen from the order dated 20.10.1986. This was carried out and hence the applicants cannot get any benefit by way of arrears before the date of issue of the judgement. If the applicants had already been promoted before the date of issue of this judgement, then they are only entitled for fixation of seniority in the cadre of Fireman-A/Diesel Assistant/Traction Assistant from the earlier date as indicated above and the promotion to the higher grade should be affected from the date their juniors were promoted on the basis of fixation of their seniority as indicated above. Their pay should also be fixed

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notionally on par with their juniors. The arrears will arise only from the date of issue of this judgement.

17. In the result, the following direction is given:-

(i) The selected candidates as per the select list dated 4.9.86 should be treated ~~as promoted~~ ^{for consideration for promotion} to the post of Fireman-A/Diesel Assistant/Electrical Traction Assistant notification of the memo calling for volunteers for the selection and those vacancies arising from the date of issue of the notification for that empanelment till the issue of the Railway Board's letter No. PC IV/86/06/651/1 dated 25.9.86.

(ii) The promoted candidates as above will take their seniority from the date they passed the departmental examination after the training in accordance with law provided those candidates coming up for filling up the vacancies to the extent indicated above passed the departmental examination after training at the first instance.

(iii) In pursuance of the above direction, some of them would have become eligible for promotion to the higher grades. If so, if they are not already promoted to those higher grades, they should be considered for promotion to those higher grades in accordance with law. Their pay if promoted, should be fixed on par with their juniors but they are entitled to arrears only from the date of issue of this judgement.

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(iv) Those who are already promoted to the higher grades, are entitled for notional fixation of pay and seniority from the date indicated above on par with their juniors and they are entitled for arrears, if any, on that basis only from the date of issue of this judgement.

18. The OA is ordered accordingly. No order as to

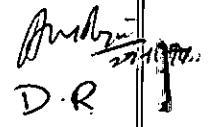

(B.S. JAI PARAMESWAR)
MEMBER (JUDL.)

27.11.97


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 27th November, 1997

vsn


D.R.

Copy to:

1. The General Manager, South Central Railway, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Secunderabad.
3. The Divisional Railway Manager, South Central Railway, Guntakal.
4. The Senior Divisional Personnel Officer, South Central Railway, Guntakal.
5. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT, Hyderabad.
6. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
7. One copy to D.R(A), CAT, Hyderabad.
8. One duplicate copy.

YLKR

6/12/97
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TYPED BY
COMPARSED BY

CHIEF CLERK BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

Dated: 27/11/97

ORDER/JUDGMENT

M.A/R.A/C.A.NO.

in

D.A.NO. 162/95

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

