

(85)

CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH: HYDERABAD

C.A.NO. 184 OF 1995

DATE OF DECISION: 18-11-97

K SUDHAKAR NAID & 3 OTHERS PETITIONER(S)

G.V.SUBBA RAO
~~SxxBEExxSxxRiyyxxSxxbadaxxx~~
~~andxxkxxkxxkxx~~ ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Sr.DEE, SC Rly and 6 ors RESPONDENT(S)

V.BHIMANNA ADVOCATE FOR THE
RESPONDENT(S)

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

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

1. Whether Reporters of local papers may be allowed to see the judgement? —
2. To be referred to the Reporter or not? —
3. Whether their Lordships wish to see the fair copy of the judgement? —
4. Whether the judgement ~~xxx~~ is to be circulated to the other Benches? —

JUDGEMENT DELIVERED BY HON'BLE SRI R.RANGARAJAN, MEMBER(A)


HBSJP
M(J)


HRRN
M(A)

(86)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.184 of 1995

DATE OF ORDER: November, 1997

BETWEEN:

1. K.SUDHAKAR NAIDU,
2. B.VONOD KUMAR,
3. A.SRINIVASA RAO

.. APPLICANT

AND

1. The Senior Divisional Electrical Engineer
(Maintenance), South Central Railway,
Secunderabad BG Division,
Secunderabad 500 371,
2. The Divisional Railway Manager,
Secunderabad 500371,
3. The Chief Personnel Officer,
S.C.Railway,
Secunderabad 500371,
4. D.Lakshminarayana,
5. G.Nagendra Babu,
6. T.Masthan Valli,
7. B.Vanaraju.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA, Adl.CGSC

CORAM:

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

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

JUDGEMENT

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

Heard Mr.G.V.Subba Rao, learned counsel for the applicants and Mr.V.Bhimanna, learned standing counsel for the respondents. All the four private respondents (R-4 to

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R-7) were served notice but none of them were present nor they were represented by a counsel.

2. There are three applicants in this OA. They are working as H.S. Grade I Electrical Fitters in the Power Supply Installation/Remote Control (PSI/RC for short) in (Traction Distribution) the TRD Organisation of South Central Railway at Dornakal at the time of filing this OA.

3. Before the case is examined, it is necessary to indicate the cadre structure of this organisation:-

Vijayawada-Balharsha and Secunderabad-Balharsha Section of South Central Railway is an Electrified Section. TRD Organisation which controls the Over Head Equipment of the PSI in that Section consists of two wings namely (i) Over Head Equipment (OHE for short) and (ii) Power Supply Installation/Remote Control (PSI/RC for short). OHE wing has got unskilled and semi-skilled and skilled categories. Skilled category starts from Lineman Skilled Grade.III, Lineman Highly Skilled Grade-II and Lineman Highly Skilled Grade-I. Similarly, PSI/RC wing also has unskilled, semi-skilled and skilled categories. The skilled category starts from the Skilled Category Grade-III designated as Fitter Grade-III, Highly Skilled Fitter Grade.II and the Highly Skilled Fitter Gr.I. Above the skilled category, the controlling official is designated as ELC'B'/ATPC in the scale of pay of Rs.1400-2300. The selection of ELCB/ATPC is done by calling for willingness from the Lineman Skilled Grade.I of the OHE wing and Fitter Skilled Grade.I of the PSI/RC wing. The recruitment rules for filling the post of ELC'B'/ATPC is; (a) by promotion to the extent of 25% through selection

2

consisting of written test and viva-voce, (b) 25% by LDCE consisting of written test and viva-voce and (c) 50% by direct recruitment through the Railway Recruitment Board. The present selection for which the applicants and the private respondents (R-4 to R-7) appeared is against the 25% LDCE selection comprising of written test and viva-voce. Those who volunteered, who got 60% of professional ability and 60% aggregate, were against LDCE quota. The empanelment for LDCE on the basis of the above notified qualification, is to be done according to the seniority from among the qualified staff. This is contained in 33/AIRF dated 26.11.86.

4. When the Secunderabad Division was electrified and the TRD organisation was to be formed, a notification No.P.676/EL/TR/SC dated 20.5.88 (Page 16 to the rejoinder) was issued. As per that notification, volunteers were called for from the staff of Electrical Department of South Central Railway of all the divisions for transfer to TRD organisation to meet the staff requirement of TRD cadres on the Secunderabad/BG Division. Para 5 of the notification dated 20.5.88 gives rule for fixing seniority of those who volunteered to come to the Secunderabad division to join TRD. The relevant paragraph is reproduced below:-

"The seniority of staff within the various units of Traction Organisation will be determined from the date from which they are continuously and regularly working in the scale of pay in their parent unit as on 31.1.1986 irrespective

of any promotion orders issued after 31.3.86 though with retrospective effect. However, the inter-se-seniority of staff in the parent Unit will be maintained."

5. The applicants as well as the private respondents gave their option and joined TRD organisation of the Secunderabad Division and their seniority was fixed in the joined as Electrical Fitters Grade.III in PSI/RC wing whereas R-4 to R-7 joined OHE Wing as Lineman Skilled Grade.III.

6. It is an admitted fact that the private respondents 5 to 7 joined the Skilled grade.III in OHE wing later than the applicants except R-4 who joined later to the applicant No.1 in the Skilled Grade.III category in OHE wing. It is also an admitted fact that R-4 to R-7 were promoted to the Skilled Grade.II Lineman category earlier to the promotion of the applicants as Highly Skilled Fitter Grade-II in the PSI/RC Organisation. Due to restructuring of the cadre, both the applicants and the private respondents were promoted to the Skilled Grade.I, the applicants as Skilled Grade-I Fitter in the PSI/RC wing and R-4 to R-7 as Skilled Lineman Grade.I in the OHE Wing. As all of them were promoted to Skilled Grade-I on the same date, their seniority in the Skilled Grade-I was determined on the basis of their entry in the Skilled Gr.II. All the three applicants have entered the Skilled Gr.II later than the private respondents (R-4 to R-7). Hence when they were promoted to Skilled Gr.I their date of entry in the Skilled ~~Gr.II was also shown later than the Respondents~~

2

Gr.I was also shown later than the Respondents 4 to 7 for the above reasons.

7. The Applicant No.1 submitted a representation on 20.2.91 (Page 11 to the OA) for promoting him to the post of HS Gr.II then itself as it is stated that even in the notification calling for volunteers from other divisions to join Secunderabad Division in TRD Department, the vacancy of Gr.II Fitter in the PSI Wing was shown as vacant. That representation was disposed of by R-2 by his letter No.C/P/676/PSI/TRD dated 4.4.91 (Page 12 to the OA) stating that the seniority list of Fitter (PSI) Skilled Gr.III is under preparation and as soon as the same is published, the applicant No.1 would be called for trade test if vacancies were available in the higher grade and he comes up for promotion as per the seniority. It is stated that similar replies were given to the other two applicants also when they submitted similar representations way back in 1991.

8. Vide notification No.C.P.605 Selection.ELC'B' TRD dated 13.8.93 (Page 13 to the OA) it was proposed to fill four vacancies (3 OC, 1 ST) of ELC'B'/APTC in the scale of pay of Rs.1400-2300 (RSRP) against 25% LDCE quota in TRD Organisation of SC (BG) Division and applications were invited from Artisan staff of TRD Organisation which comprises of OHE wing and PSI/RC wing who fulfil the conditions stated in that notification. In response to that notification, both the applicants and the private respondents applied. A list of eligible employees eligible to appear for the written examination to be held on 3.10.93 was issued by the Memo No.C.P.605.Selection.ELC'B'/TRD

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dated 28.9.93 (Page 15 to the OA). The names of the applicants and the private respondents were found in that list. The list of the candidates who had qualified for viva-voce test for the selection was also notified by the memorandum No.C.P.605.Selection.ELC'SB'/TRD dated 10.11.93 (Page 17 to the OA). The names of the applicants as well as the private respondents were included in that list.

9. In the written test conducted on 3.10.93, 36 employees were called for the viva-voce. The viva-voce was conducted on 16.11.93 and 22.11.93. However, the viva-voce which was held on 16.11.93 and 22.11.93 was cancelled due to some procedural irregularities and it was reconducted on 22.2.94. The private respondents 4 to 7 were declared empanelled for the post of ELC'B' in the scale of pay of Rs.1400-2300 vide letter No.CP.605/Selection.ELC.'B' TRD dated 2.3.94 as they were found senior in the combined seniority of the candidates who gave willingness for appearing for the selection against 25% LDCE quota.

10. The applicants felt that the integrated seniority list drawn for the purpose of fixing inter-se seniority between the Linemen of OHE wing and the Fitters of the PSI/RC wing was erroneous. They further contended that the selected candidates R-4 to R-7 joined as Linemen Gr.III later than them (Applicants) who were posted as Fitter Gr.III and their promotion to Gr.II was delayed due to administrative reasons and hence the inter-se seniority in that integrated seniority list for promotion to the post of ELC'B', should be shown above that of the private respondents 4 to 7. As the applicants also qualified in that test, they should be shown as selected instead of the

shown as selected instead of the private respondents 4 to 7.

11. Earlier to the issue of the select panel dated 2.3.94, the Applicant No.2 submitted a representation for fixation of the combined seniority for promotion to the post of ELC'B' above that of R-4 to R-7 by the representation dated 24.1.94 (Page 19 to the OA) addressed to R-2. A similar representation was also addressed to R-2 by the applicant No.1 on the same date (Page 20 to the OA). All the three applicants had also submitted representation to the General Manager, South Central Railway by their representations dated 8.3.94 (Page 22 to the OA) and 28.3.94 (Page 25 to the OA). The South Central Railway Employees' Sangh also took up their cases and submitted a similar representation to R-3 by Ref.No.SCO/CM/Electrical traction dated 22.4.94 (Page 28 to the OA). But it appears that no further action was taken in this connection by the official respondent-authorities.

12. This OA is filed for quashing the select list bearing No.CP.605/Selection/ELCB/TRD dated 9.3.94 wherein the private respondents R-4 to R-7 were taken as Trainee ELC'B' on the basis of the examination referred to above by holding the same as illegal, arbitrary and unconstitutional, violative of Articles 14 and 16 of the Constitution of India and for consequential direction to the Respondents 1 to 3 to draw a fresh panel by correctly fixing the interse seniority of the applicants in HS Gr.II vis-a-vis the private respondents from the date of occurrence of vacancies in the category of HS Gr.II.

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13. A reply has been filed in this OA. The main contention of the respondents in this OA is that the seniority of the applicants vis-a-vis private respondents (R-4 to R-7) in the Highly Skilled Grade.II was determined on the basis of their entry into that grade. As the applicants entered as Fitter HS Gr.II later than the private respondents as Lineman Highly Skilled Gr.II, they (private respondents) were shown senior to the applicants even though the private respondents were posted as Linemen HS Gr.III later than the applicants. The integrated seniority for promotion to the post of ELC'B' is to be determined on the basis of their date of entry into the HS Gr.I which in this case is to be taken as entry in the HS Gr.II category as all of them were promoted as HS Gr.I on .. joined HS Gr.II later than the respondents 4 to 7, they were shown junior to R-4 to R-7 in the combined seniority list for promotion to the category of ELC'B'. Hence the applicants can have no grouse in regard to their fixation of their seniority in the integrated seniority list.

14. As regards the contention of the applicants for not promoting them to HS Gr.II when there were vacancies, the reply given by the respondents is that the seniority list of PSI Gr.III was not finalised and hence they could be promoted even if the vacancies were available only after the Skilled Gr.III seniority list was published and as the seniority list was published on 16.9.91 promotion orders were issued on 2.12.91. In the case of Lineman Gr.III in OHE wing, the seniority list of Skilled Gr.III in OHE Wing was published on 4.2.91 and trade test was conducted during

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April 1991 and promotion orders were issued on 30.7.91 promoting them to Skilled Gr.II. The respondents further submit that the examination was conducted in accordance with the rules. Even though the viva-voce tests were first conducted on 16.11.93 and 22.11.93, the same had to be cancelled due to irregularities and those who qualified in the written test only were allowed to viva-voce test held on 22.1.94 and on that basis a final select list was published. The applicants having submitted to the second viva-voce test without any murmur, they cannot question the same.

15. In view of what is stated above, the respondents were of the opinion that there are no merits in this OA.

16. A rejoinder has been filed in this OA. The contents of the rejoinder are more or less on the same lines as indicated above. No fresh point had arisen in this rejoinder.

17. The respondents submit in the reply that the applicants could not be promoted to the HS Gr.II post earlier to the private respondents R-4 to R-7 as the seniority list of HS Fitter in the PSI/RC wing was not available and hence when it was finalised ^{after} the trade test was conducted and the applicants were promoted to HS Gr.II Fitter in December 1991, whereas R-4 to R-7 were trade tested and promoted as HS Gr.II Fitter earlier to the applicants. The complaint of the applicants for promoting them to Gr.II was disposed of by the reply dated 4.4.91 (Page 12 to the OA). As the seniority list of Gr.III was

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under preparation at that time, they were informed that they ~~will~~^{would} be called for trade test when the seniority list ~~is~~^{was} published. The applicants' contention that the Lineman of OHE Wing were promoted even without finalisation of the seniority list of Lineman Gr.III is not fully answered. Whether the above contention will give any right for the applicants to be shown above R-4 to R-7 is a point for consideration in this OA.

18. The applicants contend that as far back on 20.2.91 there were vacancies of Lineman Gr.II available and they should have been promoted against those posts. When they submitted representation, they were informed that their case ~~will~~^{would} be considered as soon as the seniority list of Fitters Skilled Gr.III was finalised. But when a similar position existed for Lineman Gr.III of the OHE Wing, they were promoted to Lineman Gr.II even without the seniority list of Lineman Gr.III was finalised and in some cases even with retrospective effect and hence the respondents acted in favour of the OHE staff thereby showing discrimination against PSI staff.

19. The above contention was not fully answered by the respondents. Whether that will give the applicants any right for showing their seniority above that of the private respondents is a question to be answered.

20. When the 1st applicant submitted representation on 20.2.91 (Page 11 to the OA) which was replied by the letter dated 4.4.91 (Page 12 to the OA) stating that they have to wait till finalisation of the seniority list of Gr.III for promotion to Gr.II, the applicant No.1 took no action. He

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kept quiet. It is stated that the other applicants also submitted similar representations and they were also replied similarly. That was the time when the applicants should have questioned the wisdom of the respondents in favouring the private respondents by promoting them as Lineman Gr.II even with retrospective effect without finalising the seniority list of Lineman Gr.III. But they have failed to take any action in that connection. They took action only when the seniority list of the willing employees to the written test for the post of ELC'B' was issued by the letter dated 28.9.93 (Page 15 to the OA) by representing their case to R-2 by the representation dated 24.1.94. Thus the applicants were silent in regard to establishing their seniority right from 4.4.91 to 21.4.94. The long gap is not at all explained in the affidavit of the OA or in the rejoinder. Though the applicants submit that the seniority position of OHE Wing was not known to them and hence they kept quiet, we consider it not a satisfactory answer. Even if it is not known to them, when they were not promoted to HS Gr.II in February 1991 itself even though vacancies were available in the Fitter Gr.II in the PSI cadre as stated by them, the applicants should have taken adequate action to assert their rights. When they were replied by the letter dated 4.4.91 stating that their cases will be considered for promotion only after the seniority list of Fitter Gr.III is issued, they should have taken up this issue either through the recognised Union or directly approached the General Manager, instead of keeping quiet on receipt of that reply which they have failed to do. They could have approached the judicial forum in April

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should have

1991 itself when their case for promotion was not considered. But they were dormant and took up their case only when the integrated seniority list dated 10.11.93 was issued. That, in our opinion, is a belated action and during the intervening period of about three years, they were not responsive and asserted their right. As the seniority of private respondents was established much earlier by promoting R-4 to R-7 way back in 1991 itself, the revision of the settled seniority in HS Gr.II now after a lapse of about 3 years will only unsettle the seniority position which is not desirable. This view is also upheld by the Apex Court in other similar cases. Hence the contention of the applicants that there was discrimination between them and the private respondents 4 to 7 in their promotion to HS Gr.II cannot be upheld for the reasons stated above.

21. The applicants in the rejoinder submit that the provisions of paragraph 228 of the Indian Railway Establishment Manual, Volume-I has been violated. The applicants further submit that they were overlooked for promotion to HS namely HS Gr.II on account of wrong assignment of the relative seniority of the eligible staff. The wrong seniority may be due to full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. If so, persons promoted due to administrative error should be shown junior to those who should have legitimately promoted over those who have been wrongly promoted earlier. In the present case, the respondents have erred in not promoting them to the Highly Skilled Fitter Gr.II due to the reasons

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mentioned above and it makes them eligible for getting the seniority above the private respondents R-4 to R-7 in terms of paragraph 228 of the IREM Vol.I.


22. We have examined this point. The Respondents 4 to 7 were promoted to Gr.II earlier to the applicants. Even though the applicants submit that the reason given for earlier promotion of R-4 to R-7 comes under paragraph 228 of IREM Vol.I and hence they have a case for giving them seniority in the integrated seniority list above that of the private respondents, we do not think that the above reasoning of the applicants is appropriate. The private respondents 4 to 7 were not promoted due to the error of decision on the part of the respondents or due to any other reasons. There were vacancies of Lineman Gr.II and it may be possible that the respondents would have felt that filling up of those vacancies is essential to maintain service or for reasons known to them even if the seniority list of Lineman Gr.III was not issued. In the case of the applicants, necessity may not be there and hence the respondents postponed the promotion to the post of HS Fitter Gr.II till finalisation of the seniority list of SK Gr.III Fitter. The applicants if they had challenged the letter dated 4.4.91 wherein they were informed to wait for promotion till the finalisation of the Skilled Gr.II seniority list, the whole case could have been examined on the basis of the necessity for filling up the posts and a suitable direction could have been given. Having failed to do so, questioning the seniority now after a lapse of about three years is not in order and cannot be said to be a justifiable one. In view of what is stated above, we are

2

of the opinion that paragraph 228 of IREM Vol.I does not come to the rescue of the applicants to get the relief as prayed for in this OA.

23. In view of what is stated above, we are convinced that the applicants have not made out any case for allowing this OA and hence the OA is liable only to be dismissed and accordingly it is dismissed. No order as to costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

18/11/97

18th November 1997

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D.R.