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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.185/95

DATE OF ORDER : 11-03-1998.

Between :-

1. K. Peda Anakaiah

... Applicant

And

1. Chief Personnel Officer,
SC Rlys, Rail Nilayam, Sec'bad.
2. Chief Mechanical Engineer,
SC Rlys, Rail Nilayam,
Sec'bad.
3. Divisional Railway Manager,
SC Rlys, Vijayawada Division,
Vijayawada.
4. Sr. Divisional Personnel Officer,
SC Rlys, Vijayawada Division,
Vijayawada.
5. Sr. Divisional Mechanical Engineer,
C & W Department, SC Rlys,
Vijayawada.
6. B. Simhadri
7. E. Kondaiah

... Respondents

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Counsel for the Applicants : Shri P. Krishna Reddy

Counsel for the Respondents : Shri N.R. Devaraj, SC for Rlys

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CORAM:

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

THE HON'BLE SHRI B.A.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R. Rangarajan, Member (A)).

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(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Mrs.Sarada for Sri P.Krishna Reddy, counsel for the applicant and Sri NR Devaraj, standing counsel for the respondents.

2. This OA is only in the case of Applicant No.1 as the names of Applicants Nos. 2 and 3 had already been deleted by order dt.17-12-96. Notice has been sent to Respondents 6 and 7 but returned unserved. Hence it is to be taken that the respondents 6 and 7 are not interested to appear before us in this case.

3. The facts of this case are as follows :-

The first applicant herein joined as a Casual Labourer in Engineering Department and attained temporary status on 10-12-78. He being the SC community candidate, in order to wipe off the shortfall, a suitability test was conducted and the applicant was empanelled for absorption in Group-D service vide panel No.8/P. 171/SCT/CP dt.12-2-88 and posted to Electrical Department. As there was no vacancy in the Electrical Department he was ~~appointed~~ reallocated to Mechanical (C&W) Department and accordingly he was appointed as C&W Khalasi with effect from 23-3-89 (Annexure A to the reply). As per para 2511A of IREM (old Edition) and para 2005 of IRE (1990 edition) a Casual Labourer will be assigned seniority from the date of absorption against a regular post. As the applicant joined the working post on 22-3-89, he was given seniority from that date. But his contention is that he was empanelled on

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on 12-2-88 for absorption into Group-D post and the same should be taken for the purpose of seniority. The delay on the part of administration to give him posting orders on 22-3-89, should not stand in his way for getting seniority w.e.f. 12-2-88 submits the learned counsel for the respondents. But the seniority of the applicant in the cadre of Group-D service was fixed based on his entry in the C&W Department viz., 22.3.89.

4. There were 13 vacancies of Skilled Fitter Gr.III in the scale of Rs.950-1500, against 25% departmental quota (Limited Departmental Competitive Examination) in the C&W Department of the Vijayawada Division where the applicant was posted. Hence a notification was issued inviting applications from Group-D staff of Mechanical (C&W) Department with minimum VIII Standard qualification. About 118 applications were received and after scrutiny, 104 employees who had fulfilled the requisite conditions were called for written examination held on 3-4-94. As a result of the written examination, 32 employees were declared qualified for being called for viva-voce which was held on 31-5-94. The applicant herein was among the 32 employees called for viva-voce. After completion of the via-voce, a panel consisting of 12 employees was released on 28-6-94 and the 12 employees were promoted as skilled Fitter Gr.III in scale Rs.950-1500. The applicant herein did not qualify for empanelment as Skilled Fitter.

5. This DA is filed praying for a direction to the respondents 1 to 5 to produce the file connected with via-voce test held on 31-5-94 for selection to the posts of skilled Artisans in C&W Department and direct the respondents 1 to 5 to reassess the performance of the applicant according to the rules and further direct the respondents 1 to 5 to consider the case of the 1st applicant after taking into consideration his service as Casual Labour who attained temporary status from 10-12-78 to 12-2-88 and also his regular service as

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Khalasi from 13-2-88 to 22-3-89 in the department i.e. the service rendered by him before he was absorbed in C&W Department.

6. Though in the reply it is stated that he had not qualified in the skilled fitter grade, we have called for the selection proceedings in this connection. The learned counsel for the respondents submitted that the applicant had passed the qualifying examination both written and viva voce test but he could not be empanelled for the post as there were only 13 vacancies and he was at Sl.No.26 ~~in~~ amongst those who qualified in the examination and hence he could not be posted. When we questioned in regard to the seniority of the applicant amongst ~~xxxx~~ ^{those} who qualified in the selection, the learned counsel for the respondents submitted that his seniority was taken from the date he ~~was~~ posted as regular Khalasi in the C&W Department i.e. with effect from 22.3.89. When further questioned why his seniority was not fixed on the basis of the panel issued on 12-2-88, standing counsel for the respondents submits that it is to be taken only from the date he joined as a regular Group-D service and hence his date of entry i.e. 22-3-89 in the C&W Department is taken for fixing the seniority amongst those who passed the examination and thereby he was placed at Sl.No.26.

7. We have considered the above submission. The applicant was empanelled against the SC reserved quota vacancy by panel dt. 12-2-1988. He was ~~correctly~~ sent to the Electrical Department but he could not be absorbed in the Electrical Department for want of vacancy. It is not understood why the respondents sent him to the Electrical Department when they have therewithall to check the availability of the vacancy from records. Without checking the





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records and finding out the availability of the vacancies in the Electrical Department, respondents posted him in the Electrical Department thereby the applicant could not be absorbed in the Electrical Department in the first instance. However, he was re-allocated to the C&W Department and he joined there on 22-3-89. When the respondents failed to post the applicant to the department where the vacancy is available, the applicant cannot be made to suffer because of the wrong allotment of the respondents. It may be possible that the juniors in the panel dt.12-2-88 would have been posted to other departments. Thereby his juniors would have got an edge over the applicant in regard to the date of entry into the department. Hence we are of the opinion that the failure on the part of the respondents to check vacancy position for allocation of the applicant should not stand in the way of the applicant to get higher seniority.

8. Hence we are of the opinion that his date of entry in the C&W Department should be taken as 12-2-88 and on that basis his seniority should be fixed amongst those who had been empanelled in pursuance of the selection for skilled fitter Gr.III for which written examination was held on 3-4-94. If on that basis if he comes within the first 13 in the panel, he should be deemed to have been posted as Skilled Fitter Gr.III from the date his immediate junior in the panel was posted as C&W Fitter. On that basis his pay should be notionally fixed from that date. The applicant is entitled for arrears from the date he actually shouldered higher responsibility on the basis of notional fixation in accordance with the directions as above.

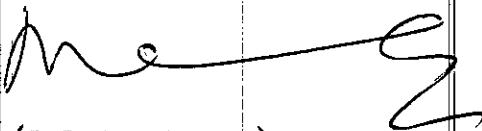
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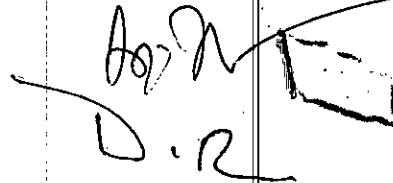
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9. The applicant in his prayer requests for fixing his seniority from the date he was brought on temporary status i.e. 10-12-78. If in the case of the other candidates the seniority position was fixed from the date of actual entry into department, the question of showing preference in the case of applicant by counting his service from the date of entry as temporary status khalasi for fixation of seniority does not arise. Hence his request is rejected.

10. With the above direction in para-8 above, the O.A. is disposed of. No costs.


(B.S. JAI PARAMESHWAR)
Member (J)
11.3.98


(R.R. ANGARAJAN)
Member (A)


D.R.

Dated: 11th March, 1998.
Dictated in Open Court.

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DA.185/95

Copy to:-

1. The Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
2. The Chief Mechanical Engineer, South Central Railway, Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager, South Central Railway, Vijayawada Division, Vijayawada.
4. The Sr. Divisional Personnel Officer, South Central Railway, Vijayawada Division, Vijayawada.
5. The Sr. Div1 Mechanical Engineer, C & W Dept., SC Rlys, Vijayawada.
6. One copy to Mr. P.Krishna Reddy, Advocate, CAT., Hyd.
7. One copy to Mr. N.R.Devaraj, SC for Rlys, CAT., Hyd.
8. One copy to D.R.(A), CAT., Hyd.
9. One duplicate copy.

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26/3/98
TYPED BY
COMPARED BY

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CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B.URANGARAJAN : M(A)

AND

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

DATED : 11/3/98

~~ORDER/JUDGMENT~~

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

in

O.A. NO.

185/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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