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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1468 of 1996

DATE OF ORDER: 15th SEPTEMBER, 1998

BETWEEN:

P.BALAIHA NAIDU

.. APPLICANT

AND

1. Union of India rep. by
The Secretary to the Ministry of Railways,
New Delhi,
2. The General Manager,
South Central Railway,
Secunderabad,
3. The Divisional Railway Manager (P);
S.C.Railway, Guntakal,
4. The Sr.Divisional Personnel Officer,
S.C.Railway, Guntakal,
5. S.V.SUBRAMANYA SASTRI,
6. Y.MARKANDAYULU,
7. V.Ch.V.NARASIMHAM,
8. Ch.SRIHARI VARMA,
9. M.VISVESHVAR,
10. M.B.PRASAD REDDY,
11. A.F.C.SEKHAR,
12. K.SRINIVASA RAO,
13. Y.J.DEVA SAHAYAM,
14. B.S.SIVA PRASAD,
15. Mohd.NAIMUDDIN,
16. B.NAGESHWAR RAO,
17. G.CHENCHURAJU,
18. B.V.ANILKUMAR,
19. Sk.HABEEB.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.G.V.SEKHAR BABU

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

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

HON'BLE SHRI B.S.JAI PARAMESHWAR, Member (Judl.)





Contd....2

JUDGEMENT

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

Heard Mr.G.V.Sekhar Babu, learned counsel for the applicant and Mr.N.R.Devaraj, learned standing counsel for the respondents.

2. There are private respondents impleaded as R-5 to R-19 in this OA. As seen from the Deputy Registrar's office note dated 23.9.97, notices ^{were} served on R-1 to R-4, R-7 and R-16 to R-19. Notices not returned served in respect of R-5, R-13 and R-15. Notices sent to R-6, R-8 to R-12 and R14 have been returned with no clear endorsement of the postal authorities there on. Hence the learned counsel for the applicant was directed to issue private notices to the respondents and file proof of the same within 10 days from the date of receipt of the notice. In the office note of the Deputy Registrar dated 9.12.97, it is noted that none of the parties were present. The learned counsel for the applicant has not so far taken steps to issue private notice to R-6, R-8 to R-12 since notices sent through the postal authorities have not been returned with clear endorsement by them. In view of that, the OA was listed before this Bench for further orders as the OA was filed on 7.11.96.

3. Even today, there was no satisfactory reply from the respondents' counsel in this connection. Disposal of this OA may not affect the private respondents. Hence the OA is disposed of with the following orders.

4. The applicant in this OA was appointed as a temporary Khalasi in Class IV with effect from 31.12.79 in

the Electrical Department, Guntakal Division of South Central Railway. His engagement as APS Khalasi was on 3.6.79. Later he progressed as per the channel existing for the serving employees and got promoted as Lineman-III in the scale of pay of Rs.950-1500 on 11.9.84. He was further promoted as Lineman-I in the scale of pay of Rs.1320-2040. While he was working so, he was promoted purely on ad hoc basis for a period of three months as Electrical Chargeman-B in the scale of pay of Rs.1400-2300 with effect from 7.11.92 due to exigencies of service as it was thought that LDCE panel for regular appointment of Electrical Chargeman-B ^{could} ~~will~~ be over within three months. But that target could not be maintained by the respondents. The applicant was continued on ad hoc basis further. He was selected on the basis of the selection procedure to the post of Electrical Chargeman-B against 25% LDCE quota and he was retained as Apprentice Mechanic with two years statutory training and absorption thereafter as Electrical Chargeman/B at the end of the training after he ^{was} ~~is~~ found fit in the training. The above is as per the Office Order No. TRD/002/1994 dated 31.1.94 (Annexure A-III at page 17 to the OA). Thus the applicant was working on ad hoc basis right from 7.11.92 to 30.1.94.

5. Thereafter the applicant requested that his ad hoc promotion as ELC-B should be treated as training and on that basis ^{to} promote him straight away without training, by his representation dated 25.7.94 (Annexure IV at page 18 to the OA). The DEE/TRD, Renigunta had supported his case which recommendation was sent to R-3 by his letter dated 26.8.94 (Annexure V at page 19 to the OA). Further also

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the same DEE/TRD sent similar recommendations to R-3 (Annexure A-VI at page 20 to the OA). The applicant himself made representation dated 25.9.95 (Annexure VII at page 21 to the OA) addressed to the Chief Electrical Engineer for reckoning his adhoc promotion equivalent to statutory training period of two years and posting him on that basis straightaway without training. However, the Office Order No.001/96 dated 1.3.96 (Annexure IX at page 23 to the OA) was issued stating that the applicant had completed 2 years of training on 30.1.96 and passed the suitability test for the post of ELC'B' on 2.2.96 and he was absorbed as ELC-B in the grade of Rs.1400-2300 (RSRP) on a pay of Rs.1640/- with effect from 2.2.96. He was also given time for one month from the date of issue of that Office Order in terms of S.C.No.130/81, to exercise his option for fixation of his pay. Subsequently, on 18.9.96, a provisional seniority list of staff in the category of ELC-B in the scale of pay of Rs.1400-2300 was issued. In that list, the applicant's name is shown at Sl.No.27. He filed representation on 14.10.96 (Annexure XI at page 27 to the OA) protesting against the provisional seniority list and requesting for placement of his name at Sl.No.12 instead of 27 for the reasons stated in that representation. The applicant submits that no reply had been received by him for that representation.

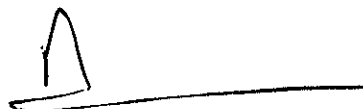
6. This OA is filed praying for a direction to R-2 to reckon the adhoc officiating service with effect from 7.11.92 to 6.11.94 as training for the post of ELC-B instead of from 31.1.94 to 30.1.96, modifying the order No.G/P.608/VII/TRD, dated 1.3.96 accordingly and also

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fixing his seniority on that basis and also modifying the order No.P.612/EL/TRS/TRD/ELC'B', dated 18.9.96 by which provisional seniority list was issued.


7. At the outset, it is to be stated that the applicant was promoted as ELC-B against 25% LDCE quota on the basis of the order dated 31.1.94 (Annexure III). Though the applicant submits that he was promoted against the promotional quota, no proof has been produced by him to that effect. The Office Order dated 31.1.94 is very clear and it clearly states that he was promoted against 25% LDCE quota and was appointed as Apprentice Mechanic and will be on 2 years' statutory training after which he will be absorbed as ELC-B on being found fit in the test to be conducted at the end of the training. Hence the question of considering his case as if he is promoted against promotional quota does not arise. The OA is considered on the basis that he was promoted only against 25% LDCE quota and posted as Apprentice Mechanic.

8. The main contention of the applicant is that he had worked on ad hoc ELC 'B' for about two years even though the initial order was passed posting him only for three months on ad hoc basis. The long experience gained by him due to his working for two years on ad hoc basis is sufficient to post him as ELC-B, even if he ^{is} ~~has~~ promoted against 25% LDCE quota, without training. The respondents for fictitious reasons have not considered his request even though the same was recommended by DEE/TRD on 26.8.94 and by subsequent correspondence also. Even during the alleged training, he was not given any training but he was asked to



discharge the duties of ELC-B. No test was conducted at the end of the training and the statement of the respondents that he was tested on 2.2.96 after completion of the training is a false statement. The training period of the applicant was curtailed by about six months by the competent authority and that itself ^{was} ~~is~~ sufficient to come to the conclusion that he was trained without any reasons and such training ^{was} ~~is~~ not necessary in view of his ad hoc promotion earlier to his posting as ELC-B against 25% LDCE quota.

9. The main contention of the applicant is that the training, for him ^{was} ~~is~~ not necessary as he was working on ad hoc basis for about four years and that itself is sufficient training for him. Whether such a statement can be taken on the face value, is to be considered. As per the reply, 25% of the vacancies in the grade of ELC-B can be filled by serving employees on the basis of Limited Departmental Competitive Examination (LDCE). The recruitment rules for promotion against the said LDCE quota provides written and viva-voce tests. Once an employee has been selected on that basis, he has to undergo training and that training starts only after the candidate was found fit ^{during} ~~for~~ the selection. The applicant was found fit in the selection against 25% LDCE quota for the post of ELC-B and he was sent for the training under DEE/TRD, Renigunta. Hence the applicant cannot say that his earlier working as ad hoc ELC-B should be treated as training and no training is necessary as the recruitment rule is contrary to his submission. The relevant rules have been followed strictly.



9. The above submission of the respondents appears to be very satisfactory. The recruitment rule for promotion against LDCE quota clearly states that a candidate selected against that quota should undergo two years' training and pass the test after completion of the training before being posted regularly as ELC-B. The Recruitment Rule does not say that any working experience on ad hoc basis as ELC-B earlier can be equated to training. When such a rule does not exist, the applicant has got no right to treat the ad hoc working as ELC-B as training. If it is considered as training on the basis of the recommendations of the DEE/TRD, Renigunta, that will be against the rules. The DEE/TRD, Renigunta cannot make recommendations without following the extant rules. His unnecessary recommendations without following the rules have given a false hope to the applicant to contend so.

10. In case the applicant wants to get ad hoc promotion to be treated as training, then he should have challenged the recruitment rule for LDCE quota and also requested for necessary amendment to the rule in the way he deems fit. But the rule is not challenged. When the rule is in existence, the applicant cannot get any relief which is not in conformity with the recruitment rule. Hence the applicant has to undergo training from the date of his appointment as Apprentice Mechanic for two years and pass the test and get posted as ELC-B. That process has been strictly followed by the respondents. He was posted as ELC-B from 2.2.96 after he passed the test after the training.

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11. If the training is waived, though the applicant may gain, it may cause incalculable depression in the seniority to those who were appointed against the promotional direct recruitment and other LDCE quota earlier. Hence his request for waiving training period as he had already worked on ad hoc basis as ELC-B is detrimental to the other employees and hence on that score also this contention is to be rejected.

12. The applicant submits that no training was imparted to him and no test was conducted after the training. The very fact that the Office Order clearly states ^{d.} that he was retained at Gudur under TFO/OHE/GDR as Apprentice Mechanic and ^{would} ~~will~~ be on two years statutory training after which he ^{would} ~~will~~ be asorbed as ELC-B on being found fit at the end of the training, clearly indicates that he was posted for training. If he was asked to do certain duties during that period, the applicant cannot say that those duties are not training duties. It is for the respondents to decide how to give him training. The test, after training is over, need not be in the form of written or viva-voce. The respondents can decide his suitability on the basis of observation made during the training period and ^{Can} ~~could have~~ declared him fit. Hence the contention that he was not trained and tested at the end of the training as stated by the applicant has no base.

13. Reduction of training in no way means that the applicant can be appointed without training. Due to exigencies of service, it may be necessary to reduce the training and also for the reasons of neccessity of the Department. Reduction of training period and posting him

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against the working post of ELC-B no way is against the recruitment rules. The recruitment rule, has to be complied with fully and training period, if necessary, even if he is posted as ELC-B, can be curtailed. His regular posting as ELC-B will start only from the date he was posted after the completion of full course of training as ELC-B.

14. The respondents in their reply submit that the applicant has not challenged the order dated 31.1.94 whereby he was posted for training as Apprentice Mechanic. Without challenging that order, he cannot challenge the later order dated 1.3.96 whereby he ^{is} was posted regularly as ELC-B with effect from 2.2.96 and also the provisional seniority list dated 18.9.96.

15. The applicant submits that the result of the order dated 31.1.94 is reflected in the later orders dated 1.3.96 and 18.9.96 and hence the first order dated 31.1.94 merges with the later orders and hence even if he had not questioned the ^{earlier} order dated 31.1.94, he is eligible to get the relief if he challenges the later orders dated 1.3.96 and 18.9.96.

16. The earliest order posting him as Apprentice Mechanic and sending him for training is dated 31.1.94. All the other orders issued were out come of this order. Hence it is to be treated that the applicant was satisfied with the order dated 31.1.94 and hence he cannot question the later orders. He should have challenged the order dated 31.1.94 at the appropriate time. Challenging of the order dated 31.1.94 at the appropriate time cannot be side



lined. In any case, as we have already held that the applicant was asked to undergo the training in accordance with the recruitment rules and on that basis the orders issued subsequently cannot be challenged. But from the fixation of pay as given in the order dated 1.3.96 and the issue of provisional seniority list dated 18.9.96, it has to be seen whether fixation of pay and the provisional seniority list has been issued in accordance with law. Hence this OA is limited to that extent only.

17. The applicant made three valid contentions which needs to be examined at length. Those contentions are analysed as below:-

(i) The first contention is that one Mr.M.Srinivasulu who was also appointed as ELC-B by the same order dated 31.1.94 was absorbed without training as ELC-B and that treatment was not given to him which, in his opinion, is a case of discrimination.

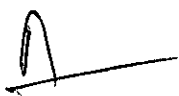
We have perused the order appointing Mr.M.Srinivasulu. It is clearly stated that the said Mr.Srinivasulu was empanelled against the departmental quota and not against 25% LDCE quota. Hence the applicant cannot question the posting of Mr.Srinivasulu immediately after the selection as ELC-B as 25% departmental quota recruitee need not undergo training. The applicant was promoted against the 25% LDCE quota which necessitated his training for two years. Hence the contention of discrimination has no validity.

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(ii) The second contention of the applicant is that his fixation of pay at the stage of Rs.1640/- with effect from 2.2.96 in the scale of pay of Rs.1400-2300 is erroneous and needs correction.

This OA was filed on 7.11.96. With the reply, an annexure was enclosed as Annexure A-1 dated 17.7.97 indicating his pay fixation as Rs.1560/- with effect from 2.2.96 in the scale of pay of Rs.1400-2300. When the applicant has questioned his fixation of pay and the OA is pending, the respondents cannot issue an order altering his fixation of pay as given in the Office Order No.G/P.608/VII/TRD dated 1.3.96. Such fixation when the OA is pending is irregular. Hence, we have no hesitation to set-aside the letter indicating the revision of pay vide No.G/P.608/VII/Elec.Traction, dated 17.7.97 (Annexure I to the reply).

18. The next question arises as to how his pay is to be fixed when he was regularly promoted with effect from 2.2.96 as ELC-B. The applicant was posted as Apprentice Mechanic by the order dated 31.1.94. When he was Apprentice Mechanic with lien as Lineman-I in the scale of pay of Rs.1320-2040, he can be paid only in the pay scale in which he holds regular lien. His adhoc appointment will not give him any right to give the pay scale of Rs.1400-2300 when he was undergoing the training. When the respondents state that his pay was fixed erroneously in the scale of pay of Rs.1400-2300 during the training period which was corrected subsequently, that statement cannot be said to be irregular and inconsistent^t statement in view of F.R.26. The pay of the applicant during the training was correctly fixed on the basis of his pay drawn in the post



of Lineman-I. In the case of direct recruits, they have no lien on any post. Hence for them, during the training period, the fixation in the scale of pay applicable to the ELC-B is correct. Hence the applicant cannot say that direct recruits were fixed differently during the training.

19. Till the applicant is posted as Apprentice Mechanic, he will draw his pay in the scale of pay of Rs.1320-2040. Hence his stage of pay as Lineman Gr.I on the crucial date of 2.2.96 is known. When he is posted as regular ELC/B his pay has to be fixed in that grade on the basis of his pay last drawn as Lineman-I under FR 22(c) as ELC-B is a promotional post and carries higher responsibilities compared to Lineman-I. But on 2.2.96 when the applicant was posted as ELC-B he had to his credit the ad hoc service as ELC-B. Hence that credit has to be given in the pay fixation for his ad hoc service as ELC-B though that ad hoc service as ELC-B may not count for seniority. After the fixation of his pay as ELC-B on regular promotion under FR 22-C as mentioned above, he has to be given increments for the period he worked as ad hoc ELC-B. The pay thus fixed will determine his actual pay as on 2.2.96 when he was promoted regularly as ELC-B. Hence a direction also has to be given to fix his pay accordingly.

20. A provisional seniority list of ELC-B was issued on 18.9.96. The applicant in his representation dated 14.10.96 protested against that provisional seniority list and submitted that he should be shown at Sl.No.12 in that list instead of 27. The respondents have not traversed in the reply whether they had replied his representation dated

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14.10.96. As they have not traversed any thing in the reply in this connection, it has to be held that the representation dated 14.10.96 was not replied. Hence the provisional seniority list could not have been made final. If they file a review petition later stating that the representation of the applicant dated 14.10.96 was disposed of, that statement will not be taken note of as the respondents had failed to counter his challenge of the provisional seniority list dated 18.9.96 in the reply. Hence a direction also has to be given to dispose of his representation dated 14.10.96 now on the basis of the extant rules and thereafter finalise the provisional seniority list. No doubt, if the applicant is aggrieved by the final seniority list of ELC-B, he is at liberty to take such proceedings as are available to him.

21. In view of what is stated above,

(i) Fixation of pay of the applicant as per the revised letter dated 17.7.96 is set-aside. The respondents are directed to fix his pay as per the directions given in para 19 supra;

(ii) The respondents should dispose of his representation dated 14.10.96 in regard to the objections raised by him against the provisional seniority list dated 18.9.96. Thereafter only they should issue a final seniority list of ELC-B in the scale of pay of Rs.1400-2300;

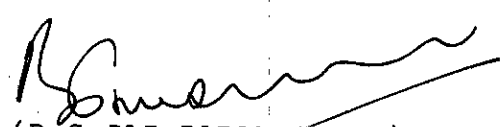
(iii) The applicant is at liberty to challenge the final seniority list as and when issued if he is aggrieved

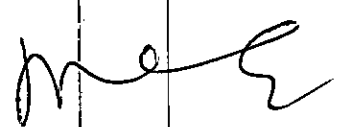
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by that list, in accordance with law.

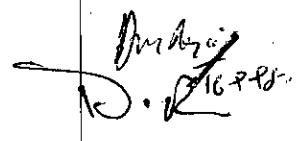
22. The OA is ordered accordingly. No order as to costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

15.9.98

DATED: 15th September, 1998


D. R. 16.9.98

vsn

DA.1468/96

Copy to:-

1. The Secretary to the Ministry of Railways, New Delhi.
2. The General Manager, South Central Railway, Secunderabad.
3. The Divisional Railway Manager (P), S.C. Railway, Guntakal.
4. The Sr. Divisional Personnel Officer, S.C. Railway, Guntakal.
5. One copy to Mr. G.V. Sekhar Babu, Advocate, CAT., Hyd.
6. One copy to Mr. N.R. Devaraj, Sr. CGSC., CAT., Hyd.
7. One copy to D.R. (A), CAT., Hyd.
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SRR

26/10/98 (15)

II COURT

TYPED BY
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 15/9/98

~~ORDER~~/JUDGMENT

~~M.A./R.A/C.P.H.C.~~

in

C.A. NO.

1468/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

