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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 198/96.

Dt. of Decision : 17-08-98.

M. Ramachander

... Applicant.

Vs

1. The Govt. of India
Min. of Railways rep. by
its Secretary, New Delhi.

2. The General Manager,
SC Rly, Rail Nilayam,
Sec'bad.

3. The Chief Workshop Manager
O/o the Dy.C.S.T.E. (Sheps),
Single & Telecom Workshops,
Mettuguda, Sec'bad.

... Respondents.

Counsel for the applicant : Mr.G.Vidya Sagar

Counsel for the respondents : Mr.N.R.Devaraj, Sr.CGSC.

CORAM:-

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

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

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ORDER

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

Heard Mr. Sudhir for Mr. G. Vidya Sagar, learned counsel for the applicant and Mr. N. R. Devaraj, learned counsel for the respondents.

2. A notification was issued on 30-05-88 for filling the posts of Trainee Chargeman-B against the 25% LDC quota as on 1-6-88. As per the recruitment rules for appearing for the posts of Trainee Chargeman-B in the S&T Workshop, Mettuguda in the grade of Rs. 1400-2300/- the age qualification is 45 years as on 1-6-88. ^{on the date} The applicant was above 45 years of age. Hence, he filed OA. 538/89 on the file of this Bench for reckoning his age of 45 years net as on 1-6-88, ^{but on} ~~from~~ the date of occurrence of the vacancy. That OA was disposed of by the following order:-

"We have heard the learned counsel for the applicant Sri G. Bikshapathy and the learned standing counsel for the respondents Sri N. R. Devaraj, S.C. for Railways. The counter averred that the quota proposed to be filled in the year 1985 was not reserved for SC and the reversion of the then selected candidate Sri Venkatram Raju was not for rectifying the anomaly but because the post ought to have been filled up with a skilled grade candidate which qualification Sri Venkatram Raju did not possess. It is unnecessary to further adjudicate on this matter. However, it is seen that the said vacancy of 1985 was set aside by the DPC by an order dated 10-7-87. Thus, the vacancy was available from 10-7-87. The counter also states that two posts assessed against LDCs quota of Chargeman 'B' had arisen in the year 1987 and an age limit has been prescribed for the candidates who appear for the test in accordance with the instructions applicable to filling up posts in the Mechanical Department which are also applicable to the S&T Department. It would be equitable that the age limit prescribed should be reckoned from the date when the vacancy had arisen. Since, it is admitted that one vacancy had arisen on 10-7-87, we are of the view that it should be equitable to prescribe the age limit of 45 years as on 10-7-87. If this be the relevant

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date, the applicant who was overaged by five months on 1-6-88 would be eligible for appearing for the selection which according to both the parties has not yet taken place and has been postponed. In the circumstances, we direct that the applicant accordingly be considered for the vacancy which has arisen pursuant to the impugned notification dated 30-5-88. With these directions, the application is disposed of. There will be no order as to costs.

We would make it clear that this direction regarding the date for determination of the age limit is not intended to be of general application but is ordered on the facts and circumstances of the case viz., when filling up of the vacancy for a number of years and the fact that an S.C. candidate who would otherwise have been eligible for consideration is being deprived of the opportunity due to the long delay involved."

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As per that order the age of the applicant should be calculated as on 10-7-87 and as he was within the age limit on that date he was permitted to sit for the examination. But that was ordered on the facts and circumstances of the case viz., when filling up of the vacancy for a number of years and the fact that an SC candidate who would otherwise have been eligible for consideration is being deprived of the opportunity due to the long delay involved. Accordingly, the applicant was permitted to sit for the examination and he was found successful in the examination. He was sent for the training ^{the completion} which ended on 10-07-93. After ^{the} successful _{was} of the training and suitability test the applicant was absorbed as Chargeman-B w.e.f., 28-8-93. Thus, for every purpose the date of entry to the post of Chargeman-B ^{is} ~~is~~ treated as 28-08-93.

3. The applicant submits that as the vacancy had arisen on 10-7-87 and he was permitted to sit for the selection against that vacancy by the judgement he should be given seniority from 10-7-87 and not from 28-8-93 as decided by the respondents. His representation dated 16-9-95 (Annexure-III) which was disposed of by the impugned order No.75782/Estt/LDCE dated 22-1-96 (Annexure-I) stating that his seniority is to be counted in the post of Chargeman-B only w.e.f., 28-8-93 and not from 10-7-87.

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4. This OA is filed for setting aside the impugned order No. 75782/Est/LDCE dated 22-1-96 and for a consequential direction to direct the respondents to place the applicant in the seniority w.e.f., 1985 during which period the post fell vacant together with all consequential benefits.

5. The main contention of the applicant in this OA is that he had been permitted to sit for the examination as he was less than 45 years of age on 10-7-87 when the vacancy arose or in vacancy which had arisen earlier to 1987 in the year 1985 and he should be given the seniority from that date onwards. For this he relies on the judgement of this Tribunal in the earlier OA.538/89 decided on 7-8-89.

6. Normally, the date of entry in a category decides the seniority position in that category in accordance with the panel position of an employee. The applicant entered the post of Chargeman-B only from 28-8-93. In accordance with the ~~scheduled~~ settled rules the applicant can get the seniority in the post of Chargeman-B only from 28-8-93. Hence, it is to be seen whether a departure is to be made in this connection in view of the judgement in OA.538/89.

7. The relevant portion of the judgement had already been ~~not~~ extracted above. A reading of that relevant portion clearly indicates that the applicant's age for consideration for the post of Chargeman-B to enable him to sit in the examination ~~should be~~ ^{should be} ~~available~~ on the basis of his age at the time of occurrence of the vacancy i.e., on 10-7-87. The extracted portion of the judgement also does not indicate that he will get seniority if selected to the post for Chargeman-B from that date i.e., on 10-7-87. It is also to be added that such consideration for age qualification has been given in view of the fact that the post reserved for SC was not filled for a long time and the applicant who ^{is} ~~was~~ an SC was available for consideration. It is made it clear in the judgement that the observations made in the judgement will ^{in be} ~~not~~ ^{precedence} treated as ~~precedence~~ in other cases.

8. In view of the above judgement we are convinced that the applicant has no vested right on the basis of the judgement in OA.538/93 to claim seniority from 10-7-87 from the earlier date and he is entitled for claiming seniority only from the actual date of entry as Chargeman-B i.e., 28-08-93. The respondent organisation has correctly fixed his seniority in accordance with the settled rule and we do not see any reason to interfere with the decision taken by the respondent authorities.

9. In view of what is stated above, we find no merits in this OA. Hence, the OA is dismissed. No costs.


(B.S.JAI PARAMESHWAR)

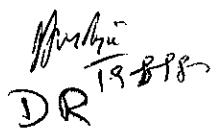
MEMBER (JUDL.)

17.898


(R. RANGARAJAN)

MEMBER (ADMN.)

Dated : The 17th August, 1998.
(Dictated in the Open Court)


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Copy to:

1. The Secretary, Min.of Railways, New Delhi.
2. The General Manager, South Central Railway, Railnilayam, Secunderabad.
3. The Chief Workshop Manager, D/O The Dy.C.S.T.E(Shops), Signal & Telecom Workshop, Mettuguda, Secunderabad.
4. One copy to Mr.G.Vidya Sagar, Advocate,CAT,Hyderabad.
5. One copy to Mr.N.R.Devraj,Sr.CGSC,CA,Hyderabad.
6. One copy to D.R(A),CAT,Hyderabad.

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II COURT

TYED BY
COMPARED BY

CHECKED BY
APPROVED BY

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: 17/8/98

ORDER/JUDGMENT

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

in

C.A.NO. 198/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPENSED OF WITH DIRECTIONS

DISMISSED

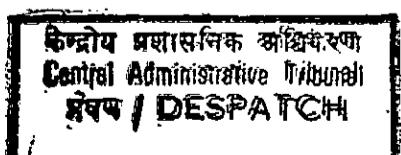
DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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HYDERABAD BENCH