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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.36 of 1996

DATE OF ORDER: 2 July, 1998

BETWEEN:

S.SRINIVASA RAO .. APPLICANT

AND

1. The Chief Personnel Officer,
South Central Railway,
Secunderabad,
2. The Sr.Divisional Personnel Officer,
S.C.Railway, Sanchalan Bhavan,
Secunderabad. .. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. K.SUDHAKAR REDDY

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

CORAM:

SHRI R.RANGARAJAN, MEMBER (ADMN.)

SHRI B.S.JAI PARAMESHWAR, Member (Judl.)

JUDGMENT

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

Heard Mr.K.Sudhakar Reddy, learned counsel for the applicant and Mr.N.R.Devaraj, learned standing counsel for the respondents..

2. The applicant in this OA was empanelled for the post of Chargeman-B against the Limited Departmental Competitive Examination Quota (LDCE quota) issued on 24.10.89. He could not be directed for training along with the other empanelled candidates as he was relieved on

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25.1.90 for secondment to 'Zimbabwe' through Rail India Technical Economic Society (RITES). On desecondment on 1.1.93, he was directed for ^{the} requisite training for two years which was curtailed later on, on the basis of his empanelment in the LDCE Examination held on 24.10.89. The applicant filed OA 1247/93 on the file of this Bench in regard to his seniority which OA was disposed of on 21.8.95. It was directed in that judgment that the applicant on his successful completion of training for the post of Chargeman-B, should be shown as senior to his immediate junior empanelled and certain directions were also given in regard to his fixation of pay. In obedience to that direction in that OA, the selection proceedings were amended and the applicant was shown senior to the empanelled candidates in the LDCE selection held on 1.7.89 (written test), 27.9.89 and 23.10.89 (Viva-voce), above S/Shri S.D.D'Cruze (OC) and A.Krishna (ST). This is evident from the letter No.CP/535/Dsl/App.Mech. dated 24.10.89 (Annexure IV at page 11 to the OA).

3. Shri A.Krishna (ST) after completion of two years' training, was absorbed as Chargeman-B on 31.3.92. As the applicant underwent training later, he was absorbed as regular Chargeman-B on 9.11.94 but his seniority was shown above that of Shri A.Krishna as directed by this Tribunal in OA 1247/93. However, the applicant could not be given any benefit of service above Shri Krishna as Shri Krishna was appointed against the roster meant for ST and thus he secured earlier promotion although he was junior as per the panel position.



4. Shri S.D.D'Cruze who had been selected in the LDCE quota had once again appeared for selection to Rankers quota in December 1991 and got promotion on 24.3.92 without training. All of them were promoted as Chargeman-A later.

5. Alert notices for selection of Foreman-B in the scale of pay of Rs.2000-3200 for filling up 8 posts of OC, 2 posts of SC and 2 posts of ST, were issued vide memos No.CPO/SC letter No.P/605/REM/DSC dated 27.9.95 (Annexure-I at page 8 to the OA) and C/M/DSL/KZJ/Staff Sup/30/95 dated 22.12.95 (Annexure II at page 9 to the OA). In that list, the seniority of the applicant was shown below that of S/Shri D'Cruze and A.Krishna. The applicant submits that there were only 8 vacancies for OCs and as he had been shown below that of Mr.D'Cruze and Mr.Krishna at Sl.Nos.16, his chances for getting empanelled as Foreman-B is remote even if he qualifies in the examination.

6. This OA is filed praying for direction to the respondent-authorities herein to review the seniority list published and also the notification dated 22.12.95 and place him above the employees selected in 1992 Rankers who were absorbed as regular Chargeman-B on 24.3.92 and to give him proforma seniority as Chargeman-A with effect from 1.3.93.

7. The respondents ^{had} filed ^a reply. The main submission of the respondents is that the applicant was given seniority above that of Shri D'Cruze and Shri A.Krishna in the panel published consequent on the LDCE selection held on 1.9.89. As the applicant was deputed on secondment to



Zimbabwe, he could not be trained along with the others. However, when the applicant came back on desecondment, he was sent for training and he was placed above that of S/Shri D'Cruze and A.Krishna in terms of the Establishment Serial Circular Nos.60/80 and 61/80 enclosed as Annexure-III at page 10 to the OA. He was deemed to have been posted as Chargeman-B with effect from 31.3.92. But that date will not give any benefit to him with reference to Shri A.Krishna as Shri A.Krishna was promoted earlier against a reserved point for ST. Hence he can only ask for seniority above Shri D'Cruze on the basis of the LDCE selection. But the said Mr.D'Cruze also appeared against the Rankers quota for the year 1991 and he was ~~selected~~ empanelled and promoted straightway, as there was no need for Rankers to undergo training for promotion as Chargeman-B, on 24.3.92. The said Mr.D'Cruze after having selected in the LDCE quota, again appeared for selection under the Rankers quota in the year 1991 and got promoted without training on 24.3.92. The applicant was absorbed as regular Chargeman-B on 31.3.92 on the basis of the LDC Examination held in the year 1989 after undergoing two years training. Hence on the basis of the date of entry as Chargeman-B, the applicant ranks junior to Mr.D'Cruze. He cannot be shown senior to Shri Krishna as Shri Krishna had been promoted as Chargeman-B on the basis of the LDC Examination and promoted against ST ~~quota~~ quota which occurred earlier. Thus the respondents sustain the seniority position of the applicant as given in the notification dated 22.12.95 calling for applications for the post of Diesel Mechanic and Electrical Foreman-B in the scale of pay of Rs.2000-3200.



8. At the outset, the learned counsel for the respondents submitted that this OA is not maintainable as the applicant had violated the rules of constructive res judicata. He amplified his submission by submitting that the applicant earlier filed OA 1247/93 regarding his seniority and that was disposed of by the order dated 21.8.95. The direction given in that OA was fully complied with by the respondents. If the applicant had any other seniority dispute, he should have combined it along with the OA 1247/93 and for the same seniority above that of S/Shri A.Krishna and D'Cruze, he cannot repeatedly file the OA. As this OA is also with regard to the seniority above that of the said two employees, the applicant violated the rules.

9. The learned counsel for the applicant submitted that he has been given the seniority above that of S/Shri D'Cruze and Krishna in the LDC Examination held in the year 1989 and that was correctly implemented by the order dated 24.10.89 and this is a different issue altogether. Having placed him above S/Shri D'Cruze and Krishna by the order dated 24.10.89, he cannot be shown below them in the memo calling for employees for selection to the post of Diesel Mechanical and Electrical Foreman-B issued on 22.12.95. As the Memo dated 22.12.95 is at variance with the seniority earlier given, he is at liberty to approach this Tribunal for the relief prayed for in this OA.

10. There appears to be points for consideration on both the sides. The applicant could have easily approached

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this Tribunal while filing the OA 1247/93 itself for giving him seniority above the Rankers' seniority for the year 1991 if he has been shown senior in the feeder category for promotion as Chargmean-B. But he did not do so. Probably the applicant would not have imagined that in the Rankers' quota, Mr.D'Cruze may become senior to him. Considering both the view points, we feel that justice will be done if the case is now decided on merits rather than dismissing it at the threshold itself on the ground of rule of constructive res judicata. Hence we proceeded to dispose of this OA on merits.

11. We have perused the records. The only point for consideration is whether the applicant should have been called for selection against the Rankers' quota in the selection held in December 1991 when Mr.D'Cruze was called and appeared. At that time, the applicant was not in India as he was under Secondment to Zimbabwe and came back on Desecondment only on 1.1.93. As the applicant was not available in India due to secondment to Zimbabwe when the Rankers' quota selection was held in December 1991, the case of the applicant should have been considered for selection in the Rankers' quota held in December 1991 if his juniors were promoted on the basis of the selection held in December 1991. The above ^{view} is in accordance with the Establishment Circulars No.60/80 and 61/80 (Annexure III at page 10 to the OA).

12. In order to ascertain whether the applicant was senior to be called for selection along with Mr.D'Cruze in the selection held in 1991 and also for selection notified in

the year 1992, we have called for seniority list and also the list of employees called for that selection by the order dated 23.6.98. The respondents produced the relevant records.

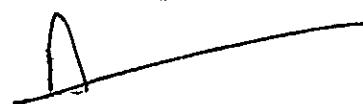
13. The notification for selection to the post of Chargeman-B in the scale of pay of Rs.1400-2300 (RSRP) in the Diesel Shed, Kazipet was issued by the notification No.CP/535/DSL/CM(B)/RANKERS dated 14.8.1991 (Page 7 of File No.CP/535/DSL/CM'B' produced by the respondents - Flagged as Folio 'A'). For that selection, Mr.D'Cruze was called but in the list of eligible candidates for selection, the name of the applicant was not shown. However, the seniority of the employees who were shown in the feeder category for appearing for selection for the post of Chargeman-B for which notification was issued on 14.8.91 is available in the said file. It is seen from the file that the applicant is at Sl.No.4 whereas Mr.D'Cruze is at Sl.No.9 (Page 18 to the said file - Flagged as Folio 'B'). ~~*****~~ It is also noted that the applicant was not called for selection as he was selected in LDCE quota and departed to Zimbabwe on 31.10.90. Thus, from the above gist, it is evident that the applicant was in the feeder category above that of Mr.D'Cruze for consideration for promotion as Chargeman-B in the Rankers' quota for which notification was issued on 14.8.91. But because of his absence-being away from India, he was not called for selection. Hence in terms of the Serial Circular Nos.60 and 61/80, the applicant is eligible for consideration against that quota for which the notification was issued on 14.8.91 even though he had been empanelled against the LDCE quota held



in the year 1989. But that empanelment in the LDCE quota will entail him to become Chargeman-B only after he completes 2 years' training and that date was fixed as 31.3.92 whereas Mr.D'Cruze was promoted on 24.3.92 having been selected against Rankers' quota of 1991 and hence became senior. If the applicant was called for selection against the Rankers' quota in response to the notification dated 14.8.91, it may be possible that the applicant would have also qualified against that quota and placed above that of Mr.D'Cruze in the seniority list of Chargeman-B and thereafter in the seniority list of Chargeman-A also. But that depends on his passing of selection for promotion against 1991 Rankers' quota.

14. Another notification was issued by the Notification No.CP/535/DSL/CM(B)/RAN/MECH. dated 13.11.92 (Page 11 of File No.CP/535/DSL/CM(B)/RAN/ELEC. - Flagged as Folio 'C') furnishing panel for the post of Chargeman-B Mechanic in the grade of Rs.1400-2300 - Diesel Loco Shed, Kazipet - 25% quota of Rankers. But it is stated that the selection could not be processed due to receipt of orders of restructuring. That is evident from the letter No.CP/535/Dsl/Ch.'B'/Rank dated -6-94 (Page 25 to the said file). Hence it is not necessary for us to examine whether the applicant ^{was} ~~has~~ to be considered for selection against Rankers' quota in the year 1992.

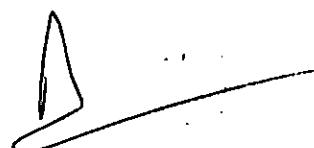
15. Another Notification No.CP/535/Dsl/CM/B/Rankers dated 24.6.94 (Page 31 to the said file - Flagged as Folio 'D') was issued for formation of panel against Rankers' quota for filling up the post of Chargeman-B. The



applicant had given his unwillingness to sit for that examination by his letter dated 20.10.94 (Page 43 to the said file) as by then he was already undergoing training for promotion against LDCE quota of 1989 and his training was likely to be curtailed. In fact he was posted against LDCE quota as Chargeman-B on 9.1.94. Hence his refusal dated 24.10.94 has no meaning as before finalising that selection for which notification was issued on 24.6.94, the applicant had already become Chargeman-B and his date of entry as Chargeman-B is also with effect from 31.3.92. Hence his unwillingness letter dated 20.10.94 has no relevance in the present issue. The respondents relied on the letter dated 20.10.94 to make out that as the applicant had given his unwillingness letter, it should be presumed to come to the conclusion that he was unwilling for selection against the Rankers' quota even in the selection held in December 1991. The above view of the respondents is not only improper but also can be termed as perverse. Government organisation should not deny proper career benefits to their employees on irrelevant considerations. Hence, the respondents should take a proper care in future to avoid such interpretation thereby resulting in miscarriage of justice.

16. As stated earlier, the only point is whether the applicant will get any benefit if he is allowed to sit for the Rankers' quota now for the year 1991 and passess the same for further promotion as Foreman-B for which notification dated 22.12.95 was issued.

17. The selection for the post of Foreman-B involves written test and viva-voce. The applicant will get any



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advantage even if he is given seniority above Mr.D'Cruze only if he passes the written examination for the post of Foreman-B. But it is seen from the reply that the written test was held on 10.1.96 for 12 vacancies of Foreman-B comprising of 8 OCs, 2 SCs and 2 STs. The applicant is one amongst them. But he failed to qualify in the written examination. Having failed to qualify in the written examination for Foreman-B selection, even if he is given seniority above Mr.D'Cruze by considering him for promotion against Rankers' quota for the year 1991 and presuming he ~~had~~ been placed above Mr.D'Cruze in that selection, he ~~would not have been selected~~ for the post of Foreman-B as he had failed in the written test. Similarly, in the written test held on 26.10.96 for the post of Foreman-B comprising of 6 OCs and one ST, the applicant also appeared for the same but failed in the written test. As stated earlier, Mr.Krishna marched over him due to reservation for ST in the Chargeman-B quota. Mr.D'Cruze, if he had already been promoted as Foreman-B on the basis of selection referred to above or any other earlier selection, the applicant could have no grouse for not considering him for selection against the Rankers' quota for the year 1991 as he had failed in the written examination for Foreman-B as stated above. However, for future selection for Foreman-B, if Mr.D'Cruze had not been promoted already as Foreman-B, the applicant ~~had~~ ~~may have~~ a chance for promotion as Foreman-B earlier to Mr.D'Cruze.

18. The learned counsel for the respondents submit, that without impleading Mr.D'Cruze, the applicant cannot ask for seniority above Mr.D'Cruze. The applicant is not

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at fault for not considering his case when he returned back from Zimbabwe, for promotion against the Rankers' quota held in December, 1991. Hence even if the applicant had not impleaded Mr.D'Cruze in this OA, the applicant ~~can not~~ could have ^{had} ~~had~~ ^{ed} the benefit if he fulfills all the other conditions.

19. In view of what is stated above, following direction is given:-

If Mr.D'Cruze had not already been promoted as Foreman-B, the case of the applicant should also be considered for promotion to the post of Chargeman-B against Rankers' quota in pursuance of the notification issued on 14.8.91 and if he is found successful in that selection, his seniority should be suitably fixed in the seniority list of Chargeman-B on that basis. If Mr.D'Cruze had already been promoted as Foreman-B, the OA stands dismissed.

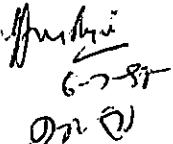
20. The OA is ordered accordingly. No order as to costs.


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


(R.RANGARAJAN)
MEMBER (ADMN.)

21/7/98

DATED: 2 JULY, 1998


M. S. JAI PARAMESHWART
6-7-98
On 2

01.36/96

Copy to:-

1. The Chief Personnel Officer, South Central Railway, Secunderabad.
2. The Sr. Divisional Personnel Officer, S.C.Rly, Sanchalan Bhavan, Secunderabad.
3. One copy to Mr.K.Sudhakar Reddy, Advocate, CAT., Hyd.
4. One copy to Mr. N.R.Devaraj, Sr.CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate copy.

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II COURT

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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: 27/7/98

ORDER/JUDGMENT

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

in
C.A.NO. 36/98

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

