

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.430/96.

Dt. of Decision: 09-09-98.

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|-----------------------|----------------------|
| 1. A.Sabeer | 19. M.Kotaiah |
| 2. P.Krishna | 20. A.Saranga Pani |
| 3. D.Kotaiah | 21. D.Hanumantha Rao |
| 4. P.Kondala Rao | 22. Ch.Koteswara Rao |
| 5. O.Suri Babu | 23. D.Subba Rao |
| 6. K.Veera Raju | 24. K.Sambaiah |
| 7. J.Shewry | 25. M.Ramanaiah |
| 8. P.Loganathan | 26. Balaram Sunani |
| 9. B.V.Harish Kumar | 27. B.Kotaiah |
| 10. M.Prasad | 28. S.Vasantha Rao |
| 11. Ch.Niranjana Rao | 29. P.Krishna |
| 12. D.Subrahmanyam | 30. B.Mohana Rao |
| 13. M.P.Nageswara Rao | 31. M.V.V.Ramana |
| 14. K.Joseph | 32. N.J.Ramadevi |
| 15. V.Frasanna | 33. B.Mogala |
| 16. P.K.Khan | 34. E.Adinarayana |
| 17. D.Veerawamy | 35. N.Sambasiva Rao |
| 18. B.Gandhi | |

..Applicants.

Vs

1. The Divl.Rly. Manager, SC Rly,
Vijayawada Division, Vijayawada
2. The Sr.Divl.Personnel Officer,
SC Rly, Vijayawada Division, Vijayawada.
3. The Sr.Divl.Engineer, TRD, SC Rly,
Vijayawada.
4. The Chief Electrical Engineer,
SC Rly, Rail Nilayam, Sec'bad.
5. Ch.Mahabees Subhani
6. S.Deva Raju
7. K.Sundaraiah
8. S.Koteswara Rao
9. M.Sambasiva Rao
10. Sk.Abdul
11. B.Frakasham
12. G.Ramanaiah
13. G.Surya Frakasham
14. P.Punnaiah
15. M.Ramana
16. K.Nagendra Singh
17. M.Samuel
18. Y.Chinna Kondaiah
19. B.John
20. K.Nageswara Rao

..Respondents.

Counsel for the applicants : Mr.P.Krishna Reddy

Counsel for the respondents : Mr.V.Rajeswara Rao, SC for Rlys.
Mr. N. Name Mohana Rao

CORAM:-

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

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

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[Signature]

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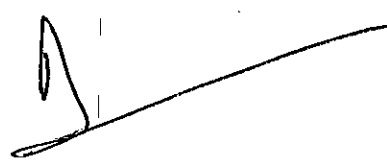
ORDER

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

Heard Mr.P.Krishna Reddy, learned counsel for the applicants and Mr.V.Rajeswara Rao, learned counsel for the official respondents. Private respondents are impleaded as R-5 to R-20. Mr.Siva for Mr.N.Ramamohana Rao, learned counsel represents the private respondents No. R-5 to R-11 and R-13 to R-15. Notice has been served on all the private respondents except R-13 and R-14. However R-13 and R-14 are represented by Mr.N.Rama Mohan Rao.Hence, notice have been served on all the private respondents. Other than private respondents represented by Mr.N.Rama Mohan Rao the names of other respondents called out found absent.

2. There are 35 applicants in this OA. When they filed this OA they were in the cadre of Khalasi Helpers. A provisional seniority list was issued bearing No.B/P.612/II/TRD/Vol.2 dated 2-9-95 (Annexure-V to the OA) of the semi-skilled Lineman in the scale of Rs.800-1150/- in the OHE Wing of Electrical TRD Department. In that private respondents herein were shown as seniors to the applicants in the OA. But it is stated that no final list has been finalised. Hence, it is not necessary for us to go into that seniority list at this juncture. However, a notification was issued bearing No.B/P. 135/II/TRD/Vol.I dated 21-2-96 (Annexure-IV to the OA) for filling up 27 vacancies of Lineman Gr-III against 50% Rankers quota. The Khalas Helpers and Head Trolleyman of OHE Wing were alerted for that examination and the names of those alerted is indicated in the memorandum dated 21-2-96. The names of the applicants were not found in that list where as the ^{private} respondents were called for the test.

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3. Though initially an interim order was passed in this OA on 3-4-96 directing that the selection for the post of 27 vacancies in Lineman Gr-III in TRD department shall not be finalised or issued until further orders, the same was vacated by another interim order dated 14-10-96 permitting the respondents to issue a select panel subject to the out come in this OA. Accordingly, it is learnt that the posts were filled.

4. This OA is filed praying for a direction to the respondents 1 to 4 to revise the seniority of the applicants and respondents 5 to 20 giving the seniority to the respondents No.5 to 20 below the applicants taking into consideration their date of entry into TRD Electrical Organisation and assigning to the private respondents bottom seniority in TRD Electrical Organisation by ignoring the upgradation order dt. 14-10-92 and for a further direction to the respondents No.1 to 4 to call the applicants for interviews for selection to the post of Lineman Gr-III in TRD Electrical Organisation before selection of the respondents No.5 to 20 are finalised.

5. Before we examine this issue the brief facts of this case has to be noted. In the TRD Electrical Organisation there are posts of Khalasi and Trolleyman. The post of Trolleyman could not be filled as seniors working in the TRD organisation were not willing to come as Trolleyman, though some junior Khalasies were willing to occupy the posts of Trolleyman. Hence options were called for from other departments viz., Engineering Department, from Group-D staff for posting as Trolleyman in the TRD organisation. There were response from other departments in that connection. Some of the junior Khalasies of the TRD organisation were also willing to come as Trolleyman. Hence, optees from the Engineering department as well as the junior Khalasies in the TRD organisation, who had opted to work as Trolleyman were posted as Trolleyman. It is stated that all the junior Khalasies and others who opted to come as Trolleyman from other department were

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placed below the applicant in the seniority list in the category of Khalasi. Subsequently, the applicants were promoted as Khalasi Helpers. An upgradation order was issued on 14-10-92 for treating the post of Trolleyman as Head Trolleyman with a retrospective effect. That retrospective date happens to be earlier to the posting of the applicants as Khalasi Helpers in semi-skilled grade. The Head Trolleyman are also in the semi-skilled grade. But due to the orders upgradation of Trolleyman as Head Trolleyman with retrospective effect though those posted as Trolleyman were treated as juniors to the applicants in the Khalasi grade those trolleyman gained seniority in the semi-skilled category because of the upgradation with retrospective effect. Thus, it is stated that the list by which the employees who were called for selection to the post of Lineman Gr-III was issued showing the seniority from the date of entry in the semi-skilled grade. Thus those Trolleyman had become seniors to the Khalasi Helpers who were applicants in this OA because of the seniority as provided for due to the entry into the semi-skilled grade of the applicants vis-a-vis the private respondents. The applicants were not called for the selection for the post of Lineman Gr-III as they were treated as juniors in semi-skilled grade.

6. The learned counsel for the applicants submit that the Trolleyman were juniors to them and even though they were given retrospective promotion as Head Trolleyman from a date earlier to the entry of the applicants in the grade of Khalasi Helper-Semi-skill grade, Private respondents cannot be treated as senior to them in the seniority list for purpose of promotion to the post of Lineman Gr-III. Their actual date of entry when the upgradation order was issued should be treated as their entry into the semi-skilled grade as Head Trolleyman. If so they are juniors to the applicants and hence they cannot be called for selection to the post of Lineman Gr-III earlier to the applicants herein.

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7. As usual the official respondents have not dealt with the above contentions in accordance with the rules. They showed us the letter No.P(EL)694/Sangh/LXI/23 dated 6-11-91 (Annexure-III to the reply) for sustaining their cases. The letter indicates some dialogue with the recognised unions and on that basis the seniority list was fixed. It is not a relevant documents to decide this issue. The rule will decide this issue ^{and} not the dialogue with the unions. The respondents cannot act against the rule even if the Union wishes otherwise. Hence, we cannot decide the issue on the basis of the submission of the official respondents.

8. The learned counsel for the private respondents viz., Mr.Siva for Mr.N.Ramamohan Rao contends as follows:-

1) The provisional seniority list was issued on 2-8-95. The applicants have not submitted any representations against the provisional seniority list. Hence, they cannot now contend that they are senior to the private respondents herein.

2) The upgradation proposal came into effect on 14-10-92 and on that basis the respondents were given the seniority. If the applicants are aggrieved by that upgradation order dated 14-10-92 they should have approached this Tribunal then itself. They have approached this Tribunal 4 years later. Hence, the OA has to be dismissed on the basis of limitation.

9. The whole case revolves around the fixation of seniority of the applicants as well as the private respondents in the semi-skilled category as Khalasi Helpers or Head Trolleyman. It is an admitted fact that the private respondents were promoted as Head Trolleyman in the grade of semi-skilled earlier to the date when applicants entered as Khalasi Helpers in the semi-skilled grade in view of the retrospective nature of the order dated 14-10-92 promoting the private respondents as Head Trolleyman from an earlier date. That date happens to be earlier to the promotion of the applicants as Khalasi Helpers. Normally, the date of entry into the grade decides the seniority amongst those who are in the same grade. The Head Trolleyman in view of the retrospective order entered the semi-skilled grade earlier


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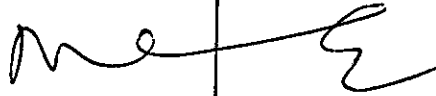
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to the applicants. In accordance with the normal rule they should be ranking seniors to the applicants herein in the semi-skilled category. There is no rule quoted before us to come to the conclusion that since the private respondents were juniors to the applicants herein in the grade of Trolleyman, the orders of promoting them to the semi-skilled as Head Trolleyman by the order dated 14-10-92 with retrospective effect is irregular, and the private respondents had to be given seniority only from a prospective date. In view of the absence of any such rule we have no other option except to accept the normal rule and pass order in this OA. The question of limitation and all other contentions are not necessary to be examined at this juncture as the case is decided on merits.

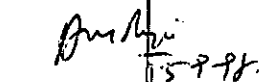
10. Since the private respondents had entered the grade of semi-skilled earlier to the applicants herein their seniority should be fixed on the date of entry into the semi-skilled grade even if that entry of the private respondents to that semi-skilled grade is on notional basis. Hence, we find the applicants have not made out a case to grant them the relief as prayed for in this OA.

11. In view of the above, the OA is dismissed. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
9.9.98


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 9th Sept. 1998.
(Dictated in the Open Court)


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Copy to:

1. The Divisional Railway Manager, South Central Railway, Vijayawada Division, Vijayawada.
2. The Senior Divisional Personnel Officer, South Central Railway, Vijayawada Division, Vijayawada.
3. The Senior Divisional Engineer, South Central Railway, Vijayawada.
4. The Chief Electrical Engineer, South Central Railway, Railnilayam, Secunderabad.
5. One copy to Mr. P. Krishna Reddy, Advocate, CAT, Hyderabad.
6. One copy to Mr. V. Rajeswara Rao, SC for Rlys, CAT, Hyderabad.
7. One copy to D.R(A), CAT, Hyderabad.
8. One duplicate copy.

9. one copy to Mr. M. N. Somashekar

YLKR

8/3/98 (9)

II COURT

TYPED BY
COMPILED 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 G.S. JAI PARAMESHWAR :
M(J)

DATED: 9/9/98

ORDER/JUDGMENT

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

in
G.A.NO. 430/96

~~ADMITTED AND INTERIM DIRECTI NS
ISSUED~~

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS~~

YLKR

