

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.596 of 1996

DATE OF ORDER: 7th December, 1998

BETWEEN:

S.MANJU RANI

.. APPLICANT

AND

1. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad,
2. The Sr.Divisional Personnel Officer,
S.C.Railway, Guntakal,
3. F.A.Sattar,
4. P.A.Devapriyani,
5. B.Bhaskara Reddy,
6. K.Mohan Rao,
7. P.Balasubrahmanyam,
8. B.Usha Rani,
9. G.Subrahmanyam.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.P.Krishna Reddy

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.)

JUDGEMENT

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

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

2. Notice has been received by the private respondents R-4 to R-9. Notice though sent was not acknowledged by R-3. As six private respondents received notice and this being a 1996 case, we feel there is no reason to give one more chance to R-3. R-4 to R-9 were called absent.

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3. The applicant in this OA is a Graduate. She was promoted and joined service as Junior Clerk in the Railways. The applicant being a Graduate was promoted against the Graduate quota of 13 1/3% with effect from 1.5.89 as Senior Clerk. The private respondents R-3 to R-9 are seniors in the cadre of Junior Clerks in the Railways. It is stated that they were promoted earlier to 1.5.89 as Senior Clerks on ad hoc basis and their services were regularised on 10.10.90 after conducting a suitability test on 30.9.90. A provisional seniority list was issued fixing the seniority position in the cadre of Senior Clerks on 24.2.92 instructing the employees to submit their representation, if any, on or before 24.3.92. It is stated that the private respondents have not submitted the representation within the period. Hence that provisional seniority issued on 24.2.92 wherein the applicant was shown senior to the private respondents was finalised. The private respondents when they represented their cases by representation dated 13.12.94, 14.12.94 and 28.12.94 were informed that their cases cannot be considered as they have not submitted any representation within the stipulated date of 24.3.92 by the order No.G.P.612/VIII/Vol.II, dated 15.2.95 (Annexure-VI at page 18 to the OA). However, the seniority issued was reopened by issuing a provisional seniority list bearing No.G/P.612/VIII/Vol.II, dated 24.4.95 (Annexure-V at page 16 to the OA). As per the revised provisional seniority list, the applicant was shown junior to the private respondents as seen from the order at Page 17 to the OA. The applicant submitted representation against the proposed revision of the seniority by representation dated 24.5.95 (Annexure-IV at page 11 to the OA).

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OA) and that was replied by the impugned order No.G/P.612/VIII/PG/Vol.2, dated 8.3.96 (Annexure-II at page 9 to the OA) rejecting her representation.

4. This OA is filed to set aside the order dated 24.4.95 (Annexure-V at page 16 to the OA) proposing revision of the seniority of the respondents 3 to 9 and the order of the administration dated 8.3.96 (Annexure-II at page 9 to the OA) whereby representation of the applicant was rejected for restoration of her seniority with all consequential benefits.

5. The main contentions of the applicant are four fold. They are as follows:-

(i) The respondent-authorities had denied the seniority of the private respondents earlier as the private respondents had not submitted the representation to the provisional seniority list issued on 24.2.92 within the stipulated period of 24.3.92 by the order dated 15.2.95. Having closed the case once for all, the respondent-authorities have no case to reopen the seniority issue once again by issuing the provisional seniority list dated 24.4.95. The law of limitation will apply.

(ii) The respondents have reopened the case suo-moto and such suo-moto reopening of the case is uncalled for and unwarranted. Hence suo-moto reopening of the seniority issue has to be set-aside;

(iii) The applicant submits that in para 2 of the reply, it has been stated that the representation of the

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applicant in regard to the objections raised to the revision of the seniority and provisional seniority list dated 24.5.95 has not been considered ^{in time} and the regret replies were given without considering her representation. She also submits that it is evident from the impugned reply

~~which is amounting in nature.~~

(iv) The private respondents have been put to suitability test only after the applicant was promoted as Senior Clerk with effect from 1.5.89. Hence they are entitled for seniority only from that date but not from an earlier date.

6. The above contentions are analysed as follows:-

In regard to the contentions (i) and (ii), it is to be stated that the issue of the seniority list is a sensitive issue. Normally settled position of the seniority should not be unsettled. But there are numerous instances where seniority position was reopened either by the respondents-organisation or by the Court orders. Hence reconsideration of the seniority list, even if it is closed once for all, cannot be said to be irregular procedure as such reopening usually takes place in Government Departments. The seniority being a sensitive issue, if a list is issued without considering all attendant factors, opening of the seniority issue once again cannot be strictly termed as irregular even if it is beyond the stipulated period. In the present case, no doubt, the private respondents had not submitted their representation within the stipulated time.

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But there appears to be some case for them to get the seniority above the applicant in view of the Maharashtra Engineers' case reported in AIR 1990 SC 1607 (Direct Recruit Class II Officers Association v. State of Maharashtra). But we do not propose to go into that at this juncture in view of the nature of the direction that is going to be given. Reopening of the seniority position, even if it is suo moto for the reasons stated above, cannot be termed as incorrect. The learned counsel for the respondents submits that it is not a suo moto revision but it has been done in view of the representations submitted by the private respondents. The learned counsel for the applicant submitted that the suo moto revision of the provisional seniority was issued even earlier to the submission of the representations by the private respondents. However, we do not want to enter into this controversy as we had already said that for the reasons stated above, reopening of seniority position cannot be termed as irregular and incorrect.

7. The third contention of the applicant is that the impugned order dated 8.3.96 was given without considering her representation. The learned counsel for the respondents submits that the wording in Paragraph 5 at Page 2 of the reply is such that it cannot be said that the reply was given without considering the representation and it only means that the representations were not considered fit enough for allowing. Though the wording can be interpreted in the way it suits the applicant, the applicant's case has to be decided on the basis of the reply dated 8.3.96. A perusal of the reply dated 8.3.96

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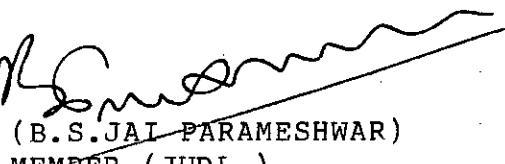
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9. In view of what is stated above, the following direction is given:-

The impugned letter No.G/P.612/VIII/PG/Vol.2, dated 8.3.96 (Annexure-II at page 9 to the OA) is hereby set-aside. R-2 is directed to reconsider the representation of the applicant dated 24.5.95 (Annexure-IV at page 11 to the OA) and dated 17.7.95 (Annexure-III at page 10 to the OA) and pass a detailed speaking order in this connection.

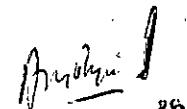
10. Time for compliance is three months from the date of receipt of a copy of this judgement.

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


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

7.12.98


(R.RANGARAJAN)
MEMBER (ADMN.)


D.N.G.
11-12-98

DATED: 7th December, 1998
Dictated in the open court.

vsn

II COURT

TYPED 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 PARAMESWAR :
M(J)

DATED: 7-12-98.

ORDER/JUDGMENT

MVR.A/c.P.No.

in
OA. NO. 596/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

