

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD

ORIGINAL APPLICATION NO.785 of 1997

DATE OF ORDER: DECEMBER, 1998

BETWEEN:

1. G.Ramuloo,
2. A.Narsimha,
3. Mallaiah,
4. Hanumanth Reddy,
5. Akber Ali,
6. Ellaiah,
7. Rajaiah U,
8. Rajaram chandraiah,
9. Mohd.Yousuf,
10. K.R.Shanker,
11. Shaik Afzal,
12. Gurupada Rao.

.. APPLICANTS

and

1. The Chief Personnel Officer,
South Central Railway,
Secunderabad,
2. The Divisional Railway Manager (MG),
S.C.Railway, Hyderabad Division,
Secunderabad,
3. The Assistant Personnel Officer,
(Mechanical), Meter Gauge,
S.C.Railway,
Secunderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.K.SUDHAKAR REDDY

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA

CORAM:

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

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

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JUDGEMENT

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

None for the applicants. Heard Mr.V.Bhimanna, learned standing counsel for the respondents.

2. There are 12 applicants in this OA. They were declared surplus at Loco Shed, Lalaguda, Secunderabad in the scale of pay of Rs.750-940 (RSRP). 17 candidates were found suitable for transfer as Khalasi Helpers and were screened for transfer to Lube Oil filter Plant (LOFP for short) on 26.10.89. In 1990, 3 vacancies were to be filled in LOFP and 3 senior most from the list of 17 screened as above were posted as Khalasi Helpers. The applicants herein were transferred and posted on 31.12.91. In this OA all the applicants are claiming seniority and promotion on par with those 3 Khalasis who were transferred to LOFP, Secunderabad earlier. The transfer order of three Khalasis who were transferred by the order dt. 24.12.90 to LOFP is at Annexure I at page 10 to the OA. The names of all the 17 who were screened for absorption in LOFP, Secunderabad can be seen at Annexure III at page 12 to the OA.

3. The applicants in this OA submitted a representation addressed to R-2 for protection of their seniority and protection of pay on absorption in LOFP, Secunderabad by the representation dated NIL at Annexure A-IV at page 13 to the OA. Though the applicants in para 6.2 of the OA state that no final reply has been given to them, there was internal correspondence between R-1 and R-2.


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4. This OA is filed praying for direction to the respondent-authorities herein to consider the applicants for promotion to the post of Skilled Gr.III with effect from 1990 by protecting their seniority at Loco Shed, Lalaguda, Secunderabad and also for promotion to Gr.II and Gr.I on par with their colleagues, who were screened on 26.10.89 by counting their initial seniority at Loco shed as Khalasis with all consequential benefits such as seniority, arrears etc.

4. A reply has been filed in this OA. It is stated in the reply that all the present applicants are working under AME, LOFP, Secunderabad as Khalasi Helpers. In anticipation of creation of 23 additional posts at LOFP, Secunderabad, R-2 had given orders to screen the surplus staff to post them in LOFP, Secunderabad. It is also stated that on receipt of the letter from CME dated 3.12.90, R-2 had also given orders to fill up the existing vacancies at Diesel Shed, Moulali and LOFP, Secunderabad by 31.12.90. The date 31.12.90 as indicated in the said letter of CME is the cut off date for formation of LOFP, Secunderabad cadre and 31.1.91 as the cut off date for formation of Diesel Cadre. As the senior most Khalasis i.e, who were transferred by the order dated 24.12.90, happened to be seniors and ^{found} ~~suitable~~ ⁱⁿ ~~for~~ screening, they were posted to LOFP, Secunderabad on 24.12.90. It is further stated that R-1 conveyed that the cut off date of 1.12.90 for formation of Diesel Shed, Moulali and LOFP, Secunderabad as one unit. Since the three employees who were transferred by the order dated 24.12.90 were relieved

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and joined earlier to 1.12.90, they were assigned the same seniority along with other employees based on seniority maintained in the Steam cadre as transfers were ordered prior to receipt of the cut off date. After finalisation of seniority list, the vacancies occurred at Diesel Shed, Moulali and LOFP, Secunderabad due to creation of additional posts at Diesel Shed, Moulai in various higher grades were filled based on the new seniority list published on 10.10.91. Remaining 14 Khalasis who were screened earlier out of 17 screened were clearly advised that the posting to LOFP/SC were on bottom seniority as Diesel cadre has been formed as a separate unit from 1.12.90 and subsequent absorption to LOFP/SC and Diesel shed, Moulali ^{will be} are on bottom seniority ~~basis~~.

6. The respondents submit that the relief of those three employees by the order dated 24.12.90 is not due to any favouritism shown to them. As the applicants herein were transferred to LOFP/SC on bottom seniority vide order No.YP/135-136/LOFP.SC., dated 31.12.91 (Annexure R-1 to the reply) against the vacancies occurred on promotion and since the order was issued after the cut off date, the seniority was finalised and promotions were ordered as per that seniority. The three employees transferred by the order dated 24.12.90 ^{were} ~~are~~ seniors to the applicants. As such, they have progressed further in the cadre. The applicants are juniors to those 3 employees. Hence the question of claiming seniority over them does not arise.

7. Some internal correspondence between R-1 and R-2 has ~~been~~ taken place which was enclosed as Annexures A-V,

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A-VI, A-VII and A-VII(A) to the OA. On the basis of the above correspondence, it is stated that the order dated 31.12.91 (Annexure R-1 to the reply) was issued, submits the learned standing counsel for the respondents. The relevant portion of the order dated 31.12.91 is reproduced below:-

"With the formation of Dsl.Cadre of Dsl.Shed.MLY & LOFP.SC as one separate unit as advised under CPO.SC's Lr.No.P.535/R&M/Dsl.LOFP.SC dt.24.4.91, the employees mentioned above are transferred to LOFP.SC on bottom seniority. The employees concerned may therefore be advised that their transfer to LOFP.SC is ordered on bottom seniority. A written declaration may be obtained from the above mentioned employees accepting bottom seniority on transfer to LOFP.SC and then they may be relieved on transfer to LOFP/SC. (Emphasis added). Their date of relief/reporting for duty may be advised to this office along with their declarations."

The order dated 31.12.91 is very clear. 14 employees who were to go to LOFP, Secunderbad had to be relieved only after obtaining declaration from them that they will accept the bottom seniority on transfer to LOFP, Secunderabad and then only they should be relieved and transferred to LOFP/SC. Relieving the applicants herein without obtaining acceptance of bottom seniority in LOFP, Secunderabad is not at all contemplated by R-2 and R-3 in consultation with R1. Hence if they were relieved without submitting declaration accepting bottom seniority in LOFP/SC, the applicants

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cannot be told that they have to accept the bottom seniority. If R-2 and R-3 had failed to obtain the declaration from the applicants to accept the bottom seniority, then they cannot say that they were relieved on the condition of accepting bottom seniority in LOFP, Secunderabad.

8. To verify whether the applicants had accepted the condition in writing, we asked the learned standing counsel for the respondents to produce declarations signed by the applicants accepting the bottom seniority. The respondents have clearly stated in ^{the} reply through their Standing counsel that written declarations accepting bottom seniority in respect of only 3 employees were received and they were produced before us. It is stated that no declaration had been received from the other 9 employees before they were relieved.

9. As stated earlier, the applicants should ^{not} have been relieved without obtaining written declaration as above. If they were relieved without obtaining written declaration, then those who have not given written declaration cannot allow to suffer ^{the} by loss of seniority when they joined LOFP, Secunderabad. If they refused to give written declaration as required by the respondents in their letter dated 31.12.91, the respondents are at liberty to terminate their services if they are found surplus following the extant rules. But they cannot transfer those employees who had not given written declaration to join LOFP/SC.

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10. In view of what is stated above, it is essential that the seniority of those who had joined LOFP without giving any declaration should regain their seniority which they possessed in Loco Shed, Lalaguda, Secunderabad from where they were declared surplus. As regards further consequential benefits, nothing could be ordered as details in regard to promotion of their juniors etc. are not available in the OA.


11. In the facts and circumstances, the following direction, ^{and} ~~is~~ given:-

(i) The applicants herein who had not given written declaration of accepting bottom seniority in accordance with the letter dtd 31.12.91 before being relieved to join LOFP, Secunderabad should regain their original seniority which they possessed in the Loco Shed, Lalaguda, Secunderabad at the time of their relief and their seniority should be ^{fixed} ~~regained~~ in LOFP, Secunderabad on that basis;

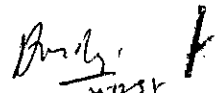
(ii) They are entitled for consequential benefits as per above seniority as stated in the above para. The consequential benefits which the applicants are entitled ^{on the basis of the remarks as in (i) above} ~~to~~ should be decided and informed to them within a period of 3 months from the date of receipt of a copy of this order. Those consequential benefits should subsequently be granted to them expeditiously.

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


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


(R. RANGARAJAN)
MEMBER (Admn.)

18/12/98
DATED: 18¹⁵ DECEMBER, 1998


DNC

6/1/99

II COURT

copy to:-

1) D.R. (A)

2) Spore

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: 18/12/98

ORDER/JUDGMENT

MA/R.A./C.P.No.

DA.NO.

785/97 in

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

* Copies

