

CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH: HYDERABAD

C.A. NO. 1124 CF 97

DATE OF DECISION: 20-3-99

K. R. Shivaraj

PETITIONER(S)

Ver. Gr. Ravachandrea Rao.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

① The C.O.T, 28 by Crm,
Sc. Ry, Rail Nilayam, Section 3 Crm RESPONDENT(S)

Mr. V. Bhimanna, Addl. C.C.W.C. ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SHRI R. RANGARAJAN : Member (A)

THE HON'BLE SHRI B. S. TAIPARMESWAR : Member (J)

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement? *N*
4. Whether the judgement ~~xxx~~ is to be circulated to the other Benches?

JUDGEMENT DELIVERED BY HON'BLE SHRI R. RANGARAJAN : Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1124/97.

Dt. of Decision : 20-03-99.

K.R.Shivaraj

.. Applicant.

Vs

1. The Union of India, rep.
by General Manager,
SC Rly, Rail Nilayam,
Sec'bad-500 071.
2. The Chief Personnel Officer,
SC Rly, Rail Nilayam,
Sec'bad-500 071.
3. The Manager (Printing &
Stationery), SC Rly,
Sec'bad.
4. C.G.Ganesan .. Respondents.

Counsel for the applicant : Mr.G.Ramachandra Rao

Counsel for the respondents : Mr.V.Bhimanna, Addl.CGSC.

CORAM:-

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

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

ORDER

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

Heard G.Ramachandra Rao, learned counsel for the applicant and Mr.V.Bhimanna, learned counsel for the respondents. Notice served on R-4. Called absent.

2. The applicant in this OA while working as Mistry in the scale of pay of Rs.1400-2300/- (RSRP) in the Machine Section of Printing Press, SC Railway, Secunderabad was

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promoted on adhoc basis to officiate as Chargeman-B in the scale of pay of Rs.1400-2300/- and retained in the same section as per Proceedings No.PSC/E/3A/SUP/PT.XIV/C-97 (Office order No.032/E/92) dated 26-5-92 (Annexure-A-I). The applicant submits that the above promotion was given as per "Rules for Recruitment Training & Promotion of Staff in the Railway Printing Presses" issued by the Railway Board. The channel of promotion has been given in Rule-107 of the said rule and it is stated that "Promotion of staff working in the various sections of the press to higher grades shall be strictly confined to the Section itself upto the stage of top supervisor of the Section". The applicant submits that he should have been promoted on regular basis as there was a clear vacancy for the post of Chargeman consequent to the promotion of the incumbent Sri G.Satyanarayana Murthy to the post of Foreman Gr-II. Though initially his promotion was for 6 months it was continued till he was reverted by the impugned order No.PSC/E/3A/Super/Pt.XV/C-97 dated 7-8-97 (Annexure-VI). Thus he submits that he had worked for more than 5 years as Chargeman-B.

3. The applicant further submits that though initially the post of Chargeman-A was downgraded as Chargeman-B due to non-availability of eligible candidates in the Machine Section for promotion to Chargeman-A when Sri G.Satyanarayana Murthy was promoted to the post of Foreman Gr-II the post was downgraded and the applicant was promoted on adhoc basis. However, one Mr.Motilal adhoc Chargeman-B, Machine Section of the General Printing Press retired from service w.e.f., 31-3-93 and hence the post was available from that date to continue the applicant against that post of Chargeman-B without any interruption.. He has enclosed the office order No.011/93 dated 9-3-93 by which

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order was issued superannuating Mr.S.Motilal. Hence, the applicant submits that there is no reason to revert him as work Mistry when he is eligible to be promoted as per the recruitment rules. Further the contention of the applicant is that the post of Chargeman-B is to be filled by SC candidate and he being an SC candidate he should have been continued in that post regularly without reversion.

4. This OA is filed to set aside the impugned order No.30/STORES/PRESS/97 dated 29-07-97 (Annexure-V) whereby the R-2 directed the R-3 to revert the applicant herein which was complied with by R-3 by the impugned order No.PSC /E/3A/Super/Pt.XV/C-97 dated 7-8-97 (Annexure-VI) and for a consequential direction to the respondents No.1 to 3 to promote the applicant as Chargeman-B (now redesignated as Junior Engineer Grade-II) in the Machine Section of the Printing Press, SC Railway w.e.f., 7-8-97 and regularise his services as Chargeman-B (now redesignated as Junior Engineer Gr-II) with all consequential and attendant benefits.

5. A reply has been filed in this OA. In the reply it is stated that the cadre strength of Chargeman-B was revised number of times due to the restructuring of the cadre and as the number of posts of Chargeman ~~has been~~ ^{was} reduced, it was decided by the office order No.P.135/Stores/SPS/PH-COMP. dated 28-10-94 (Annexure R-1 to the reply) "that the post of Chargeman-B shall be filled by Mistries/Artisans in the eligible grades of all Sections in the General Printing press on the integrated seniority basis". In view of the above circular the two employees viz., R-4 and another one Mr.A.L.Parameshwar were placed on the panel. Mr.A.L.Parameshwar is an SC candidate and hence the roster point has been filled in accordance with the rules.

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R-4 is the senior to the applicant in the entry grade of Skilled Gr-I as well as the date of entry as Mistry. Hence the applicant being junior cannot submit that his junior has been promoted as Chargeman. Further it is submitted for the respondents that initially the applicant was promoted as Chargeman-B against the downgraded post that to only on adhoc basis. Hence, the applicant cannot claim as having been promoted on regular basis as Chargeman-B and as his promotion was only on adhoc basis the administration reserves the right to revert him without giving any reason.

6. In the additional reply filed by the respondents it is stated that the Rules and Procedures prevalent at the time of conducting the selection would alone govern the selection and the rules and procedures prevalent at the time of occurrence of vacancy are immaterial. By that the respondents mean that as the office order dated 28-10-94 was ~~is~~ in force for filling up the post of Chargeman as mentioned above at the time of selection that circular was followed. Hence, the recruitment rule has been adhered to strictly.

7. It is an admitted fact that the Railway Board has issued the "Rules for Recruitment Training & Promotion of Staff in the Railway Printing Presses" and "Rule-107 of that rule book clearly indicates that the promotion of staff working in the various sections of the press to higher grades shall be strictly confined to the Section itself upto the stage of top supervisor of the Section" with certain exception. This rule has not been amended by the Railway Board. When the Rules for Recruitment Training & Promotion of Staff in the Railway Printing Presses has been issued by the Railway Board the lower authorities viz., the SC Railway cannot issue an executive order amending the

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recruitment condition. The letter dated 28-10-94 has been issued by R-2 superseding the orders of the Railway Board. R-2 being a lower authority to the Railway Board cannot amend the recruitment rules without even getting the approval from the Railway Board. In any case the rule as stated in the Rule Book has to be amended if any amendment is required in the recruitment rules for various categories of the Printing Press. No material has been placed before us to show that the amendment was done to the recruitment rule issued by the Railway Board. The issue of the letter by R-2 dated 28-10-94 cannot be treated as an amendment to the rules for promotion in the printing press issued by the Railway Board. Hence, the letter dated 28-10-94 of R-2 cannot be taken note of for promotion to the ^{post of} /Chargeman-B in the Machine Section of the printing presses, SC Railway, Secunderabad.

8. The respondents in their reply state that the rules and procedures prevalent at the time of conducting the selection would alone govern the selection. No rule has been produced before us to justify their above submissions. The respondents have erred badly in implementing the rules in regard to the adherence of the rules for promotion.

9. The Supreme Court in Rangaiah's case reported in 1983 (3) SCC 284 had clearly laid down the rule^s for promotion. The Apex Court had held that the rules obtaining on the date of occurrence of the vacancy will govern ^{the} promotion. The above direction in Rangaiah's case was further reiterated in the reported case 1999 LAB. I.C. 612 (B.L.Gupta and another Vs. M.C.D.Respondent). It has been clearly stated in the above judgement that "the rule applicable on the date of occurrence of the vacancy will

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govern the promotion policy. Any amendment made for promotion policy will have only prospective effect unless it is stated that it will have retrospective effect". In the circular dated 28-10-94 it is not stated that the above instructions will have retrospective effect. The circular itself cannot be adhered to as it is an executive order issued by the lower authority which cannot supersede the rule issued by the higher authority viz., Railway Board. The applicant has submitted the availability of the vacancy of Chargeman-B in the Machine Section w.e.f., 31-03-93 in view of the superannuation of one Motilal. Hence even if he was earlier promoted against downgraded post of Chargeman-A there was a post of Chargeman-B available w.e.f., 31-3-93 and that the applicant if otherwise eligible has to be promoted against that post. It is stated that the post of Chargeman-B is a selection post. If the applicant is not promoted earlier on adhoc basis following the rules for selection post he should be subjected to a selection now and if he is found suitable he should be promoted to the post of Chargeman-B if he is otherwise eligible.

10. The above view of ours is also in accordance with the judgement of this Tribunal in OA.408/91 disposed of on 05-12-96 (B.Raja Mallesha Vs. General Manager, SC Railway & Ors).

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

The applicant should be considered for regular promotion to the post of Chargeman-B from 31-3-93 when a fulfilled Chargeman-B post was vacant in the Machine

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Section in accordance with the rules. If he had already been considered fit in accordance with the rules for promotion to the post of Chargeman-B while he was promoted on adhoc basis there need not be any further selection. If not a selection has to be held now to consider the case of the applicant for promotion adhering to the Rule 107 of the Rules for Recruitment Training & Promotion of Staff in the Railway Printing Presses issued by the Railway Board and also following the reservation rules. If he is found suitable he should be promoted as Chargeman-B from the retrospective date i.e., 31-03-93.

12. Time for compliance is 3 months from the date of receipt of a copy of this order.

13. The OA is ordered accordingly. No costs.

B.S.JAI PARAMESHWAR
 (B.S.JAI PARAMESHWAR)
 MEMBER (JUDL.)
 Dated : The 30th March, 1999.

R.RANGARAJAN
 (R.RANGARAJAN)
 MEMBER (ADMN.)

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