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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

No. O.A.867 of 1999

DATE OF ORDER : 24.7.2000

BETWEEN :

Y.NUUKARAJU S/o Ramaswamy,
HS II Fitter,
Asstt. Mechanical Engineering (Coach)
S.C.Railway,
Vijayawada.

... Applicant

A N D

1. The Sr.Divisional Personnel Officer,
South-Central Railway,
Vijayawada.
2. Divisional Personnel Officer,
South-Central Railway,
Vijayawada.

... Respondents

Counsel for the applicant : Mr.G.V.Subba Rao.

Counsel for the respondents: Mr.C.V.Malla Reddy.

C O R A M S :

1. The Hon'ble Mr.Justice D.H.Nasir, Vice-Chairman.
2. The Hon'ble Mr.R.Rangarajan, Member (A).

O R D E R

R.Rangarajan, Member (A)

Heard Mr.G.V.Subba Rao for the applicant and Mr.C.V.Malla Reddy for the respondents.

2. The seniority of the applicant in this O.A. was refixed in view of the fact that the seniority is to be reckoned from the date of attaining temporary status, as held by this Tribunal in O.A. Nos.973 of 1999 and 977 of 1993. Accordingly, the seniority of the applicant and 13 $\frac{1}{4}$ yrs. were recast in the category of casual labour, taking into effect their date of entry into

service and the date of attaining temporary status. By the time the seniority list was revised, 134 persons in the scale of Fitter category Gr.II, were found due for promotion to the post of Skilled Fitter, Gr.I, with retrospective dates, at par with their juniors already working in the post of Skilled Fitter, Gr.I, as per the earlier seniority. In view of non-availability of sufficient vacancies, the respondents decided to promote all the eligible employees in the post of Skilled Fitter, Gr.I, in a phased manner, subject to availability of vacancies and on passing the trade test.

3. The applicant was called for the trade test in the first batch of 73 employees for promotion to the post of Skilled Fitter, Gr.I, but he was not found successful. Subsequently, the second batch of 61 employees were trade tested.

4. It is the submission of the applicant in this O.A. that he should have been called again for the trade test before calling the second batch of employees for promotion to the post of Skilled Fitter, Gr.I, and had that been done, he would have been placed above the second batch of employees in the post of Skilled Fitter, Gr.I. The applicant submits that he was called for the trade test again only after all the 134 candidates were examined and he was fitted as Skilled Fitter, Gr.I, below the persons who were called for the trade test in 1998. Thus, the applicant submits that his seniority as Skilled Fitter, Gr.I, has been brought down in view of the inappreciation of the ^{rule by the} respondents regarding the instructions of conducting the trade test ~~in~~ the post of Skilled Fitter, Gr.I.

5. This O.A. is filed for a direction to the respondents to conduct a trade test for promotion to H.S. Gr.I, in the scale of Rs.1320-2040/- and promote the applicant to the post w.e.f. the date his juniors were promoted with all consequential benefits, such as arrears of pay and allowances, by declaring that omission of his name in the list of candidates called for the trade test in May, 1998 as arbitrary, illegal and unconstitutional.

6. The present case has to be examined in the light of the circumstances under which the applicant and others, numbering 134, were called for the trade test. In view of this Tribunal's

direction in the O.A.s mentioned above, it became incumbent on the part of the respondents to fix the seniority of the applicant and others from the date they attained temporary status instead of a later date when they were regularised/confirmed. In view of the direction of this Tribunal in the above mentioned O.A.s, the applicant herein became senior to some of the Carriage & Wagon ^{fills} artisan category, who were holding the post of HS Gr. I, but became junior in view of the review of seniority list.

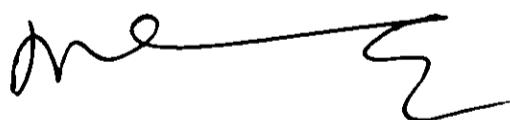
7. It is a fact that the trade test has to be held once in 6 months. When an employee fails in a trade test, in normal circumstances, he is again called for the trade test on completion of 6 months period. But in a situation where a number of candidates have to be trade tested for higher promotion due to change in the seniority position, the number of vacancies available for accommodating all the staff, in this case 134 employees, has to be considered on the basis of availability of vacancies. There is nothing to controvert that 134 vacancies were available and all the employees could have been trade tested at the same time at one stretch. The vacancies arose in the normal course due to various reasons such as retirement, etc. If that be the case, calling all 134 employees at one stretch and empanelling all in one list, may not be a feasible proposition. Hence the respondents are right when they called the 134 persons in batches for the trade test. The rule of calling an employee who failed in the trade test in the first attempt, on completion of 6 months may not be possible in this case as the whole lot of 134 employees have to be considered for promotion first. If the applicant is called for the trade test again on completion of the period of 6 months of his failure in the first attempt before exhausting the list of second batch, the persons in the second batch will be put to a disadvantage, as they would be relegated to a position where their seniority has to be recast. In our opinion, such action on the part of the respondents, may not be correct.

8. Hence, we uphold the action of the respondents, calling the 134 candidates in batches, ^{immediately} ~~before~~ calling the failed candidates again in between the two batches. In that view of the matter, we do not find any irregularity in the entire exercise as the applicant has been called for the trade test again after all the 134 candidates had been considered. However, a situation may arise that the applicant could have been called for the trade test after some of the employees, who were not in the list of 134, but had acquired the status for promotion to H.S. Gr. I immediately after the 134th employee in the list, had been called for trade test. If this is the case, there is an irregularity on the part of the respondents.

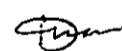
9. No such material is available from the reply filed by the respondents. The respondents are to verify the record to see that the applicant is called immediately after the 134th person has appeared for the trade test and fitted in the post of H.S Gr. I, if he is found to be successful. The seniority list should accordingly be reviewed keeping the above fact in view.

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

11. The O.A. is ordered accordingly. No order is made as to costs.



(R.Rangarajan)
Member (A)


(D.H.Nasir)
Vice-Chairman

DATED THE 24TH JULY, 2000
DICTATED IN OPEN COURT



R.S.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD

COPY TO:-

~~1ST AND 2ND COURT~~

1. HON. JUDGE TYPED BY CHECKED BY
2. HON. MEMBER COMPARED BY APPROVED BY
3. HON. MEMBER THE HON'BLE MR. JUSTICE DH. NASIR
VICE - CHAIRMAN
4. D.R. (ADMN) THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)
5. SPARE
6. ADVOCATE THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)
7. STANDING COUNSEL DATE OF ORDER 24/7/2007

~~MA/RA/CP.NO~~

~~IN~~

~~CA. NO. 867/99~~

~~ADMITTED AND INTERIM DIRECTIONS
ISSUED~~

~~ALLOWED~~

~~C.P. CLOSED~~

~~R.A. CLOSED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDER/REJECTED~~

~~NO ORDER AS TO COSTS~~

