

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No.167/2012

Date of C.A.V. : 07.11.2017

Date of Order : 04.12.2017

Between :

1. Surendra Kumar,
S/o Harpal Singh, aged 33 years,
Occ : Senior Assistant Loco Pilot,
O/o The Chief Crew Controller,
Kacheguda, South Central Railway.

2. P.Suryanarayana,
S/o Bhaskar Rao, aged 35 years,
Occ : Senior Assistant Loco Pilot,
O/o The Chief Crew Controller,
Kacheguda, South Central Railway.

3. A.Satish Kumar,
S/o Sadanandam, aged 36 years,
Occ : Senior Assistant Loco Pilot,
O/o The Chief Crew Controller,
Kacheguda, South Central Railway.

4. O.Srinivas,
S/o Chandraiah, aged 36 years,
Occ : Senior Assistant Loco Pilot,
O/o The Chief Crew Controller,
Kacheguda, South Central Railway.

5. Ram Bishnu Kushwaha,
S/o Ram Shankar, aged 39 years,
Occ : Senior Assistant Loco Pilot,
O/o The Chief Crew Controller,
Kacheguda, South Central Railway.

... Applicants

And

1. Union of India, represented by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Operations Manager,
South Central Railway,

Rail Nilayam, Secunderabad.

Counsel for the Applicants ... Mr. K.R.K.V.Prasad, Advocate
Counsel for the Respondents ... Mr.V.V.Narasimham, S.C.for Rlys
Mr.K.Siva Reddy, for R-6 and R-7

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... ***Member (Judl.)***
Hon'ble Mrs.Minnie Mathew ... ***Member (Admn.)***

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicants were recruited as Assistant Loco Pilots through Railway Recruitment Board, Secunderabad and were appointed as such on 12.01.2005. They underwent training along with their batch mates. The names of the applicants were at Sl.Nos. 54, 58, 65, 71 and 72. The services of the applicants along with 15 others were spared to Hyderabad Division on loan basis

as per the instructions of the second respondent in pursuance of the letter of Sr.DEE, Secunderabad division dated 05.10.2005. Thus the version of the applicants is that from the date of their appointment they were made to work with Hyderabad division on loan basis. Subsequently some other individuals were recruited as Assistant Loco Pilots in Hyderabad division. They submit that during December 2005, the then Sr.DME, Hyderabad division asked the applicants to give their willingness to work in Hyderabad division on permanent basis. The applicants submitted letter of willingness to continue in Hyderabad division on permanent basis on various dates during December 2005 to January 2006. During 2006, they came to know that there was a proposal to relieve the applicants back to Secunderabad division, when they called on the then Sr.DME, Hyderabad, they were asked to give request transfer applications once again in the prescribed proforma for absorption in Hyderabad division on permanent basis. They have submitted inter-divisional request transfer proforma as directed by the then Sr.DME, Hyderabad by leaving Col.8(a) which pertains to request at bottom seniority as blank. But their version appears to be that they never accepted for bottom seniority. Subsequently the 3rd respondent issued proceedings dated 28.03.2007 conveying the sanction of the competent authority as though the applicants have asked for transfer on bottom seniority from Secunderabad to Hyderabad division in the cadre of Assistant Loco Pilot. Sometime thereafter the 5th respondent issued a provisional seniority list dated 18.08.2009 showing the names of the applicants at Sl.No. 72, 74, 80, 83 and 84 duly enlisting the names of the Assistant Loco Pilots who joined in the Hyderabad division subsequent to the applicants as seniors of the applicants. They submit that on account of improper personnel management with no regard to the fact situation, the applicants have

become juniors to 85 employees who have joined subsequent to the joining of the applicants in Hyderabad division resulting in some of the juniors getting two promotions. They further submit that the prescribed proforma was manipulated at Col.8 (a) as if the applicants accepted for bottom seniority.

2. It is under these circumstances the applicants filed the present OA seeking to declare the action of the respondents in treating the applicants joining in Hyderabad division as request transfer, resulting in the applicants becoming juniors to the Assistant Loco Pilots who have joined in Hyderabad division subsequent to the joining of the applicants in Hyderabad division as illegal, arbitrary and direct the respondents to fix the seniority of the applicants in the cadre of Assistant Loco Pilot based on the date of the applicants joining in Hyderabad division and accordingly upgrade their seniority in the said provisional seniority list dated 18.08.2009 and grant all consequential benefits.

3. The respondents 1 to 5 contended interalia in their reply statement as follows :

The provisional seniority list issued vide letter dated 18.08.2009 is prepared strictly in adherence with the existing instructions by placing names of the applicants at the appropriate place duly disposing their representation on assigning seniority on this division. The contention of the applicants that at the time of borrowing them to the Secunderabad division, the Sr.DME, Hyderabad assured them about their permanent absorption in Hyderabad division is denied by

the respondents. According to the respondents, the absorption of the ALPs of their division on permanent basis will be considered only against inter divisional request transfer on bottom seniority. The applicants and the other Assistant Loco Pilots of Secunderabad division who were working on loan basis in Hyderabad division were advised properly on the rule position regarding the transfer from Secunderabad division to Hyderabad division on permanent basis. They have submitted their IDRT applications in the prescribed format duly accepting the bottom seniority and the same was forwarded to the parent division (Secunderabad division) to process the same vide office letter dated 28.02.2007. The sanction of the competent authority regarding the inter divisional request transfer on bottom seniority of the 14 ALPs listed therein on other usual terms and conditions applicable to that transfer were communicated to applicants and others. It is asserted by the respondents that the statement of the applicants regarding indicating their consent for inter divisional request transfer on bottom seniority does not carry any importance as such transfer will be considered only on bottom seniority. The office order vide letter dated 28.02.2007 of Secunderabad division and letter dated 18.04.2007 of Hyderabad does not clearly indicate the terms and conditions on which the inter divisional request transfer of the applicants along with 9 other ALPs of Secunderabad division was considered.

4. Nextly it is contended that the applicants along with 15 others (total of 20) ALPs of Secunderabad division were directed to Hyderabad division on loan basis as stop gap arrangement to overcome the shortage of Assistant Drivers till RRB candidates were allotted to Hyderabad division. But no assurance was given

by the administration at any given point of time about their permanent absorption in Hyderabad division. Contending that the action of the administration cannot be termed as illegal, arbitrary and in violation of Articles 14, 15 and 21 of the Constitution, the respondents 1 to 5 sought to dismiss the OA.

5. In their reply statement the respondents 6 and 7 contended as follows :

The OA is neither maintainable in law nor on the facts of the case and it is totally misconceived. The applicants have not impleaded all the affected parties against whom they are claiming seniority and as such the OA has to be dismissed on the ground of non-joinder of the necessary parties. The issue of seniority is an individual right and the same cannot be claimed against the affected parties without impleading them in the OA. It is further contended that the relief sought by the applicants cannot be granted since the applicants have not challenged their absorption orders and the seniority which was issued basing on the absorption orders. The version of the respondents is that the applicants intentionally have not challenged the absorption orders to avoid the question of limitation, which is very essential to look into when the third parties rights are affected and therefore the applicants are precluded from challenging the seniority list which was issued basing on the absorption orders.

6. Further it is contended that these respondents are appointed by the RRB, Secunderabad and were allotted to Hyderabad division and for all purposes the said division has to be treated as parent division and seniority has to be

reckoned from the date of their appointment in Hyderabad division. The applicants have no right to claim seniority over respondents 6 and 7 as the applicants were not borne in the Hyderabad division as on the date of their appointment.

7. Nextly it is contended that as admittedly the applicants have made applications to transfer them to Hyderabad division on request and as they submitted applications in the prescribed format of IRDT which were accepted by the official respondents and passed orders dated 18.04.2007 duly mentioning therein that their transfer is on the bottom seniority, the applicants are estopped from contending that they were placed below their juniors.

8. Thus according to the respondents 6 and 7 they were appointed by the RRB and allotted to Hyderabad division and as per law they are entitled to get seniority on the date of their appointment. Admittedly as on the date of their appointment the applicants have no order of absorption in their favour and therefore they have no right to claim seniority over them having applied and accepted the transfer on request taking the bottom seniority. Contending as above the respondents 6 and 7 sought to dismiss the OA.

9. We have heard Sri K.R.K.V.Prasad, learned counsel for the applicant, Sri V.V.Narasimham, learned standing counsel for the official respondents and Mr.K.Siva Reddy, learned counsel for the private respondents.

10. The short question which arises for consideration in the present OA is as to whether the applicants were rightly placed in bottom seniority while absorbing them into Hyderabad division.

11. It is not the case of the applicants that they have never applied for permanent absorption into Hyderabad division. They admitted in their original application that they have submitted letters of willingness to continue in Hyderabad division on permanent basis on various dates during December 2005 to January 2006. From the averments of the OA it is evident that there is Col. 8 (a) which pertains to request of bottom seniority. The only contention of the applicants is that they have not filled up Col. (8) (a) and left it blank. They say that subsequently some of the officials of the department filled up the column with the word “yes”. They did not ascribe any sort of motive to the official respondents or their subordinate officers to mislead the applicants. If there is any manipulation, the burden to prove the said manipulation is on the applicants. But they did not place any such proof before the Tribunal. In the absence of any such proof it has to be necessarily presumed that the applicants themselves filled up the Col. 8(a) with the word “yes” or they got it filled up consciously accepting bottom seniority. Further the official respondents 1 to 5 specifically contended in their reply statement that any inter divisional request transfer shall be on bottom seniority only. There is no specific denial from the applicants to the said procedure. The transfer of the applicants is not a mutual transfer or the one made on administrative grounds. The applicants themselves expressed their willingness to be absorbed

permanently in Hyderabad division. Therefore, their transfer is inter divisional request transfer in which case the principle of bottom seniority would be followed. The applicants were appointed in Secunderabad division and were subsequently borrowed to the Hyderabad division. They cannot claim seniority from the date on which they were borrowed to Hyderabad division since it was only a stopgap arrangement. They cannot claim seniority over the respondents 6 and 7 who were appointed in Hyderabad division itself.

12. The applicants are very well aware of the proceedings dated 28.03.2007 where under the competent authority absorbed them in to Hyderabad division on bottom seniority. They are also aware of the provisional seniority list dated 18.08.2009. They have not challenged the proceedings dated 28.03.2007 at appropriate time. Therefore they cannot now in the present OA claim that their seniority has to be reckoned in Hyderabad division in the cadre of Assistant Loco Pilot basing on the date of their joining in Hyderabad division. There are several employees against whom the applicants are claiming seniority. But such employees are not made parties in the OA. As rightly contended by the respondents 6 and 7 the issue of seniority is an individual right and the same cannot be claimed against the affected parties without impleading them in the OA. The OA is therefore bad for non-joinder of necessary parties.

13. For all these reasons, we absolutely see no merit in the OA and accordingly dismiss the same without any order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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