

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 31st DAY OF OCTOBER, 2013

:PRESENT:

THE HON'BLE MR.JUSTICE MOHAN.M.SHANTANAGOUDAR

:AND:

THE HON'BLE MR.JUSTICE K.N. PHANEENDRA

WRIT PETITION NO.6255/2010 (S-CAT)

BETWEEN:

SUNDARA DATTATRI.G,
S/O LATE N GURUMURTHY RAO
48 YEARS, SENIOR SECTION ENGINEER/
ELECTRICAL, O/O SR. DIVISIONAL
ELECTRICAL ENGINEER,
MYSORE DIVISION, SWR,
MYSORE-577 201.
(NOW PROMOTED AS ADEE) ... PETITIONER

(BY SRI P A KULKARNI, ADV.)

AND:

1.UNION OF INDIA
TO BE REPTD BY ITS GENERAL MANAGER
SOUTH WESTERN RAILWAY,
KESHWAPUR, HUBLI-580023

2.CHIEF PERSONNEL OFFICER
SOUTH WESTERN RAILWAY,
LAKSHMI BALAKRISHNA SQUARE,
3RD FLOOR, STATION ROAD,
HUBLI-580020

3.SRI C J DANIEL
 S/O LATE JACOB C K, 55 YEARS,
 SENIOR SECTION ENGINEER/CN,
 O/O DEPUTY CHIEF ELECTRICAL ENGINEER/
 CONSTURCTION, NO.8, MILLERS ROAD,
 BANGALORE CANTONMENT-560046

... RESPONDENTS

(BY SRI S SUGUMARAN FOR C/R3).

THIS WRIT PETITION IS FILED UNDER ATICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 12.2.2010 PASSED IN O.A. 93/2009 VIDE ANEX-A, BY THE CENTRAL ADMINISTRATIVE TRIBUNAL BANGALORE BENCH BANGALORE.

THIS WRIT PETITION COMING ON FOR HEARING THIS DAY, MOHAN M. SHANTANA GOUDAR, MADE THE FOLLOWING:

ORDER

The order dated 12.2.2010 passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore in OA No.93/2009 is called in question in this Writ Petition.

2. By the impugned order, the Original Application filed by respondent No.3 herein came to be allowed and consequently, a direction was issued to the respondents 1 & 2 to consider the case of the respondent No.3 in the panel of promotion to Group-B post of ADEE/AXEE in the scale of

Rs.7,500-12,000/- in place of petitioner herein. Aggrieved by the order of the Tribunal virtually setting aside his promotion to the post of Group-B post of ADEE/AXEE, the petitioner is before this Court.

3. The records reveal that post of Section Engineers with pay scale of Rs.6,500-10,500 and the post of Senior Section Engineers with pay scale of Rs.7,400-11,500 come within the category of Group-C posts. Group-B posts carry pay scale of Rs.7,500-12,000. The petitioner as well as respondent No.3, working in Group-C Posts are aspiring to get promotion to Group-B post. During the pendency of the matter, respondent No.3 has retired from service. However, by virtue of the order passed by the Department, the petitioner is working in Group-B i.e. promotional post.

4. A notification came to be issued on 1.8.2008 by South Western Railways for filling six vacancies of Group-B Posts. Out of six vacancies to be filled up, five vacancies are meant for un-reserved category and one vacancy is for ST category. However, the department though selected six

persons, announced promotions only for five persons including the petitioner. Another selected candidate for promotional post, namely M. Chinnareddy was not given promotion because of the fact that he was facing disciplinary enquiry at that point of time. It is made clear in the very selection order that the selection list may be altered depending upon the result of disciplinary proceedings pending against Sri M.Chinnareddy. It is to be made clear that out of five persons selected & promoted for promotional post, four persons are from un-reserved category and one person is from ST category. Thus, it is clear that one promotional post meant for un-reserved category, is kept vacant till this date.

5. The petitioner as well as 3rd respondent applied for selection to the promotional Group-B post. The feeder cadre to Group-B post is Group-C posts. As aforementioned, Senior Section Engineers as well as Section Engineers come under Group-C posts. Therefore, they are eligible to be considered for Group-B promotional posts. The relevant

regulation pertaining to promotion from Group-C post to Group-B post reads thus:

“9. INTEGRATED SENIORITY OF EMPLOYEES
BELONGING TO DIFFERENT STREAMS/
SENIORITY UNITS FOR THE PURPOSE OF
PROMOTION TO GROUP ‘B’ POSTS:

9.1: Where employees from the different streams are eligible to appear for the selection, their integrated seniority for the purpose of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs.6,500-10500 and above. In other words the date of appointment to grade Rs.6500-10500 on a non-fortuitous basis will be the criterion.

(Para 203.5 of IREM – Indian
Railway Establishment Manual)
No.E(GP)88/2/46
dated 22.12.1988.

9.2: In determining the integrated seniority of employees coming from the various streams, the inter-se seniority of employees within each stream should be maintained.

(No.E(GP)81/2/87
Dated 28.5.1983)

6. It is relevant to note that for Group-B promotional post, not only the Officers working in Electrical Engineering stream but also from other groups/streams from Group-C cadre are eligible and shall be considered. Thus, the integrated seniority list of the eligible Officers of Group-C post from all the streams has to be prepared. While doing so, the inter-se seniority of employees within each stream should be maintained. In other words, while maintaining the inter-se seniority of employees within each stream/group, the integrated seniority of employees coming from various streams needs to be prepared. Accordingly, as per the department, the seniority list was prepared by maintaining the inter-se seniority of employees within each stream.

7. In the selection process, the name of the 3rd respondent was short listed at Sl. No.6 and the name of the petitioner was short listed at Sl.No.5. As is clear from the order dated 20.1.2009, the petitioner as well as the third respondent were directed to participate in the interview proposed to be held on 23.11.2009. Ultimately, after the

vivo-voce, as aforementioned, five persons including the petitioner were selected and though one Sri M. Chinnareddy was selected was not given promotional post in view of pendency of the disciplinary proceedings against him. As could be seen from the list Annexure A-II dated 4.2.2009, immediately below the petitioner the name of one Sri.W.P. Astikar finds place against ST point. In this view of the matter, respondent No.3 questioned the promotion of the petitioner to Group-B post. Before the Tribunal while questioning the promotion of the petitioner herein, the third respondent herein also questioned the seniority list prepared & maintained by the department in respect of Group-C posts in so far as the petitioner is concerned. The Tribunal considering the materials on record set aside the promotion of the petitioner herein vide impugned order and directed the respondents 1 & 2 to consider the case of the 3rd respondent for promotion.

8. The learned Advocate for the petitioner, in support of his contentions argued by taking us through the material on record that prior to the order of promotion in question, in

the seniority list the name of the petitioner finds place above the name of 3rd respondent but the same was not questioned by the 3rd respondent; even in the integrated seniority list issued, the name of petitioner finds place above the name of 3rd respondent, which was also not questioned; the order relating to promotion was made on 4.2.2009 and the respondent approached the Tribunal on 19.2.2009. In that context, Sri Kulkarni submitted that respondent No.3 should not be allowed to challenge the seniority list after the entire process of promotion was over. He further submits that petitioner was promoted to Group-B Post on adhoc basis as back as on 20.11.1988, vide order dated 10.4.1989 as per Annexure F and such adhoc promotion continued in favour of the petitioner till 26.3.1989. However, the petitioner was promoted on regular basis on 27.3.1989 and he continued to hold Group-B post till 26.10.1999 i.e. on the date on which the notification was issued by the department notifying the applicants for promotion. In that context, Sri Kulkarni is justified in arguing that since the petitioner was given an adhoc promotion on 20.11.1988, (as

detailed supra) such adhoc promotion is continued till the regular promotion is accorded to the petitioner. Therefore, the period spent by the petitioner during adhoc promotion is also to be reckoned for the purpose of calculating the seniority.

10. The apex court in the case of *The Direct Recruit Class II Engineering Officer's Association & Others Vs. State of Maharashtra and others* reported in **1990(2) SLR 769** has concluded that if the initial appointment is not made by following the procedure laid down by the Rules but if the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

11. Be that as it may, since it is brought to the notice of the court by the learned Advocates on the record that M. Chinnareddy (selected candidate for promotion) has suffered major penalty and later retired, his case could not be considered for the purpose of promotion to Group-B post. If it is so, one promotional post in un-reserved category which

remains vacant till this day, can be filled up by promoting the respondent No.3. As the 3rd respondent is just below the petitioner in the list of persons who have faced viva-voce, naturally he should be selected and promoted to such one un-filled Group-B post which is under un-reserved category. By the said process, no prejudice or injustice will be caused to any of the parties in as much as the petitioner as well as third respondent would get promotion to Group-B post. It is needless to observe that petitioner as well as 3rd respondent were eligible for promotion. However, the third respondent was not selected for promotion due to shortage of vacancy. As aforementioned, one promotional post to which one Sri M. Chinnareddy was selected could not be filled up because of the order passed by the Disciplinary Authority. He is now retired. Thus the un-filled post needs to be provided to the 3rd respondent, who is otherwise qualified for Group-B post. It is also brought to our notice & also relevant to note that the 3rd respondent has also retired. If it is so, he should be given promotion on notional basis for the purpose of pensionary benefits.

In view of the above factual aspects and the events happened subsequent to the litigation between parties, we do not wish to discuss the dispute regarding inter-se seniority between the parties with reference to loss of three years seniority to the petitioner due to penalty advise dated 4.12.2003 as per annexure A4 and gain of 7 days seniority by the respondent No.3. Hence, we proceed to pass the following order:

- (a) The order passed by the Central Administrative Tribunal in OA No.93/2009 dated 12.2.2010 in so far as it relates to setting aside the promotion of the petitioner to Group-B post stands quashed. It is made clear that the petitioner who is holding Group-B promotional post will continue to hold Group-B post.
- (b) The third respondent shall be given promotion to Group-B post which has remained un-filled due to the order passed by the Disciplinary Authority against Sri M.Chinnareddy (since retired), notionally with retrospective effect from the date of 12.2.2009. However, we make it clear that since the third respondent has not

worked in the promotional post, he is not entitled for pay attached to the promotional Group-B post, but he is entitled to pensionary and other benefits.

- (c) The impugned order of the Tribunal dated 12.2.2010 passed in OA No.93/2009 is modified accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

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