

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.3995 of 2002

ORDER:

Heard Sri M.Surender Rao, learned Senior Counsel, appearing for Sri Srinivasarao Madiraju, learned counsel for the petitioner and Sri P.Durga Prasad, learned Standing Counsel for respondent-AP State Road Transport Corporation (APSRTC).

2. Petitioner has filed this Writ Petition assailing proceedings No.Ea/19 (10) 2000-PD dt.10-07-2001 of the respondent rejecting petitioner's request for fixation of the seniority in the category of Officer Under Training (OUT) (General) along with others who were selected and appointed during 1998 along with him and for consequential benefits on par with persons who were absorbed during November 1990.

3. The petitioner passed B.E., (Civil) in first class and obtained Degree in Civil Engineering from Andhra University. He completed M.E. (Structural) in Osmania University and was appointed as Junior Engineer in respondent corporation on 27-02-1987 after a proper selection process. He assumed charge of the said post from 27-02-1987. His probation was also declared one year later.

4. An advertisement was issued by the APSRTC in daily newspaper on 16-11-1987 calling for applications for filling up of posts of the OUT (General) by way of direct recruitment. Petitioner submitted application for being considered for the said post and the

Selection Committee vide Minute No.3/88 dt.17/19-06-1988 selected the petitioner under physically handicapped candidate quota for the post of OUT (Gen). It was because the petitioner suffered from physical disability inasmuch as his right eye is non-functional though he has appropriate standard of vision in left eye.

5. Be that as it may, since as per the physical standards prescribed by the Corporation's Service Regulations, since the petitioner was not eligible to get appointment to the said post, petitioner represented to the Managing Director of the APSRTC to grant relaxation of the medical standards and appoint him as OUT (Gen) under 02 category in the said organization.

6. By proceedings No.R2/502 (10)/87-pd dt.08-08-1989, the Managing Director of the said Corporation accorded sanction for his appointment as OUT (Gen) under 02 category duly granting relaxation of the medical standards. The said proceeding further stated that petitioner will be drafted for training for prescribed period of two years along with next batch of OUT (Gen), for which recruitment was likely to take place in the year 1990, and he was asked to wait for communication from the Chief Personnel Manager (Training).

7. Since nothing happened thereafter, the petitioner filed W.P.No.12404 of 1991 in this Court seeking a Writ of Mandamus to the respondent to appoint him as Officer in the cadre of Deputy Executive Engineer (Civil) or any other appropriate post with effect

from August 1988 with all consequential benefits such as seniority and monetary benefits. He also filed W.P.M.P.No.15779 of 1992 to direct the respondent to consider his case for appointment in the said post or any appropriate post.

8. On 20-11-1992, this Court ordered that since the Managing Director of the Corporation had relaxed the medical requirement, the respondent should consider the case of the petitioner for appointment to the post of Deputy Executive Engineer (Civil) pending further orders in the Writ Petition.

9. After this order is passed, the respondent considered petitioner's case, but appointed him to the post of OUT (Gen) under 02 category by direct recruitment mentioning in the said order that *"the Chairman had accorded sanction of relaxation of visual standard pending ratification of the Selection Committee"* and stating that *"his appointment for the said post is subject to the disposal of W.P.No.12404 of 1991 in his favour"*. It was mentioned therein that he would receive training for a period of three years.

10. Subsequently on 19-06-2000, W.P.No.12404 of 1991 was disposed of by this Court taking note of the contentions of the petitioner that he had been appointed as OUT (Gen) pursuant to the interim order granted in the said Writ Petition and leaving it open to the petitioner to agitate the issue of seniority by making a representation to the respondent and directing the respondent to consider the same in accordance with law.

11. On 31-08-2000, the petitioner gave a representation to the respondent stating that his seniority in the said post should be fixed along with others who were selected and appointed in the selection held during 1988 along with other consequential benefits, (i.e.) from the date the candidates of the 1988 batch of OUT (Gen) were absorbed i.e. November 1990 and to count his services from November 1990 on re-categorization by way of advertisement as probationary officer.

THE IMPUGNED ORDER:

12. By impugned order dt.10-07-2001 in proceedings No.Ea/19 (10)/2000-PD, the respondent rejected the said request.

13. In the said impugned order, the respondent stated that though petitioner was selected by the Selection Committee of the Board of APSRTC vide proceedings 17/19-06-1988 for the post of OUT (Gen), in the medical examination, he was declared unfit on the ground that he had only one eye and that the right eye was absent; that on his representation, relaxation from medical standards prescribed under 01 category (OUT (Technical) post) was granted to him in June 1989 by the then Vice Chairman and Managing Director to train him for positions such as Training Officer, Statistical Officer, Assistant Traffic Manager etc. for which driving was not essential and it was thought fit to draft the petitioner for training along with the next batch of OUT proposed to be recruited in the next 6 to 8 months; that the Selection Committee of the Board was competent authority to grant

relaxation of the medical standard prescribed under 01 category for appointment of OUT; and so it was proposed to consider appointing him by relaxation of the medical standard prescribed under 01 category pending ratification of the selection committee. It is stated that even for such appointment, it was necessary that at least he should be found medically fit under 02 category for the posts which do not require driving of vehicles; that he was directed to the APSRTC Hospital, Tarnaka in June 1991 for medical examination along with next batch of candidates selected for appointment as OUTs; and on 21-06-1991, he was found medically unfit to the post of 02 category also.

14. It is stated that petitioner was again advised to appear before the Medical Board on 09-10-1991, but he did not appear before the Medical Board; that he submitted another representation on 05-10-1991 to the respondent stating that the respondent had already accorded relaxation from the medical standard even under 01 category by letter dt.08-08-1989 and there is no necessity subjecting him to further medical examination; that he filed W.P.No.12404 of 1991 and pursuant to interim order dt.20-11-1992 in W.P.M.P.No.15779 of 1992 therein, he was appointed as OUT (Gen) by office order dt.22-12-1992, in relaxation of the visual standards under 01 category and he reported as such on 24-12-1992 and after successful completion of training and absorbed as Assistant Traffic Manager w.e.f. 01-08-1995; that in fact, his appointment as OUT for the post under 01 category as

well as 02 category was not possible and he himself did not avail the offer of re-medical examination in October 1991 and so he cannot claim to be appointed along with other members of panel prepared by the Selection Committee during June 1988.

15. It is stated that since he was appointed pursuant to the interim order dt.20-11-1992 in W.P.M.P.No.15779/1992 IN W.P.No.12404 of 1992 and since the said Writ Petition was disposed of without consideration on merits, his claim for seniority can only be allowed from 01-08-1995. It was also stated that petitioner's appointment was not made in the normal course, that his case was not considered on merits since he is not fit for appointment as per the Corporation rules and only because of the interim direction of the Court, he was appointed as OUT and absorbed.

CONTENTIONS OF PETITIONER:

16. Learned counsel for the petitioner contended that this order passed by the respondent is arbitrary, illegal and violative of Article 14 of the Constitution of India as well as APSRTC Employees Recruitment Regulations, 1966. According to the learned counsel for the petitioner, under Regulation 31, powers are conferred on the Corporation to deal with the case of any person in such a manner as may appear to it to be just and equitable notwithstanding any provision contained in the Regulation; and once such power is exercised by the Vice Chairman and Managing Director of the respondent in proceedings No.R2/502 (10)/87-pd dt.08-08-1989

granting relaxation of the medical standards in the OUT (Gen) under 02 category to the petitioner, the petitioner cannot be denied benefit of fixation of seniority on the completion of three years from the said date i.e. 07-08-1992; and respondent cannot be allowed to deny the petitioner benefit of the seniority because the respondent did not send the petitioner for training immediately after the said order of 08-08-1989 was passed by the respondent. It is contended that the petitioner cannot be punished for something for which the respondent is responsible and he cannot be denied seniority on the ground that he was not sent for training after 08-08-1989 immediately, or on ground that he approached this Court and was appointed as OUT (Gen) pursuant to the order dt.20-11-1992 in W.P.M.P.No.15779 of 1992 in W.P.No.121404 of 1991. He also contended that in the appointment order dt.22-12-1992, the respondent could not have mentioned that sanction for relaxation of visual standard was given by the Chairman “pending ratification of the Selection Committee” for appointment to the post of OUT (Gen) under 02 category and that such a procedure is not permitted under the Regulations.

CONTENTIONS OF RESPONDENT:

17. Learned Standing Counsel for the respondent-APSRTC however supported the order passed by the respondent. He contended that the petitioner could not have been appointed for the OUT (Gen) post either in category-I or category-II but for the relaxation granted in his favour and therefore, he cannot seek fixation of seniority on par

with other persons appointed in June 1988 when the petitioner was also selected and he cannot get any benefit like them.

18. He stated that petitioner was appointed as OUT (Gen) by office order dt.22-12-1992 in relaxation of the visual standards to 01 category, that he completed training and was absorbed as Assistant Traffic Manager w.e.f. 01-08-1995 and therefore fixation of his seniority in the OUT (Gen) category from that date is proper.

19. Reliance is also placed on Regulation 7 (1) of the Regulations which states “no person shall be eligible for appointment any post in the service by direct recruitment unless he satisfies the Corporation that he is of sound health, possesses active habits and is free from any bodily defect or infirmity”; and Note-1 of the said Regulations which stated “the competent authority may by a general or special order specify the standards of physical fitness to be fulfilled by the candidates and different standards may be prescribed for different categories of posts”. He contends that the appointment of the petitioner for relaxation of the medical standards prescribed for the post of OUT (Gen) will not automatically entitle him to the benefit of seniority on the basis of higher medical standards prescribed under 01 category. He pointed out that for 01 category posts driving was not essential but for 02 category post, it was necessary.

THE CONTENTIONS OF THE COURT:

20. I have noted the contentions of both sides.

21. The material placed on record by the parties indicates that the petitioner had in fact applied for the post of OUT (Gen) under 02 category and not for OUT (Technical) under 01 category. He was selected by the Selection Committee for OUT (Gen) under 02 category against the roster point No.6, vide Minute No.3.1988 dt.17/19-06-1988.

22. The respondent vide proceedings No.R2/502 (10)/87-pd dt.08-08-1989, accorded sanction for his appointment as OUT (Gen) under 02 category by granting relaxation of the medical standards and promising that he would be drafted for training for the prescribed period along with the next batch of Officers for which recruitment was likely to take place in 1990. This relaxation granted by the respondent is referable to Regulation No.31 referred to above which empowers the corporation to deal in a just and equitable manner notwithstanding anything contained in Regulations. Therefore, Regulation 31 will override Regulation 7 (1) quoted by the respondent.

23. Once such exemption was granted to the petitioner by the respondent (without any qualification) from the prescribed medical standards by proceedings dt.08-08-1889, the petitioner ought to have been sent for training for the OUT (Gen) post immediately. But admittedly nothing happened for two years till the petitioner approached this Court by filing W.P.No.12404 of 1991 and obtained an interim order on 20-11-1992 in W.P.M.P.No.15779 of 1992 to

consider his case for appointment to the post of Deputy Executive Engineer (Civil) pending the Writ Petition. It was only thereafter that proceedings dt.22-12-1992 were issued by the respondent appointing him as OUT (Gen) stating that the Chairman had accorded sanction for relaxation of visual standard “*pending ratification of the Selection Committee*”.

24. It is not explained how the Chairman could have made the petitioner’s appointment as well as relaxation of visual standards “subject to ratification of the Selection Committee” when the Selection Committee had selected the petitioner as can be seen from the Minute No.3/1988 dt.17/19-06-1988 and when there is no provision in the above regulations which makes the relaxation already granted in the petitioner’s favour on 08-08-1989 being recalled or set aside or modified by a subsequent order and making it “subject to ratification by the Selection Committee”.

25. Therefore the clause in the office order dt.22-12-1992 making the petitioner’s appointment as OUT (Gen) under 02 category by relaxing visual standards pending ratification of the Selection Committee is contrary to the above regulations and has to be declared as null and void.

26. That apart in the impugned order, the respondent was under the misapprehension that the relaxation from medical standard granted to the petitioner on 08-08-1989 by the then Vice Chairman and Managing Director of the Corporation was in respect of 01

category post i.e. OUT (Technical). The order dt.08-08-1989 shows that the relaxation from medical standards was given by the Vice Chairman and Managing Director of the Corporation for appointment of the petitioner in OUT (Gen) i.e. 02 category and not in 01 category. Having got carried away by this misapprehension, the respondent misdirected himself by going into the issue as to whether the ratification given for 01 category (which is factually incorrect) is valid for relaxation for appointment to 02 category post. He then blames the petitioner for not attending to medical examination though directed to do so in October 1991 and justifies denial of seniority to the petitioner from the date prior to 01-08-1995, the date on which the petitioner completed the training as OUT (Gen) in the post of Assistant Traffic Manager.

27. It is not the petitioner's fault that he was not sent for training immediately after order dt.08-08-1989 was passed and if the respondent did not appoint him in the OUT (Gen) category till 24-12-1992, the petitioner cannot be denied the benefit of seniority from the date prior to 01-08-1995 on that basis. Otherwise, it would be allowing the respondent to take advantage of his own wrong. Therefore, if the petitioner became eligible for appointment as OUT (GEN) in 02 category after 08-08-1989, if the period of training is taken into account, he should be given seniority from the date he completes the training.

28. Though there was some controversy as to the duration of the period of Officers Under Training in OUT (Gen) post i.e. two years as contended by the petitioner or three years as contended by the respondent, it is pertinent to note that there is no denial of the petitioner's allegation that persons who were selected in June 1988 along with some were absorbed as OUT (Gen) in November 1990 in the counter affidavit filed by the respondent. In fact, it is admitted in the impugned order itself in page 52. Therefore, it is clear that the period of training is only two years and not three years as mentioned in the order dt.22-12-1992 passed by the respondent.

29. Accordingly, I am of the opinion that if the petitioner became eligible for appointment as OUT (Gen) in 02 category after 08-08-1989, he ought to have been sent for training immediately and if the period of training is two years, then his seniority in the post of OUT (Gen) ought to be counted from 08-08-1991. The petitioner cannot be penalized for the failure of the respondent in not sending him for training immediately and appointing him only in 1992 in the post of OUT (Gen) in spite of the relaxation granted on 08-08-1989 in his favour.

30. The respondent is also not entitled to state that the petitioner's appointment was not made in the normal course or that his case was not considered on merits and he was not fit for appointment as per the Corporation rules. Any such stand by the learned counsel for the respondent would be clearly contrary to Regulation 31 of the

Regulations, referred to above, as well as the order dt.08-08-1989 which exempted the petitioner from the medical standards prescribed for OUT (Gen) 02 category post and has to be termed as a perverse stand.

31. Accordingly, the Writ Petition is allowed and the impugned order in Proceedings No.Ea/19 (10)/2000-PD dt.10-07-2001 passed by the respondent is set aside; and the respondent is directed to count the seniority of the petitioner from 08-08-1991 in the post of Officer Under Training (General) in 02 category and grant all other consequential and attendant benefits from that date. No costs.

32. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-09-2017

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