

(2000) 12 MAD CK 0109
In the Madras High Court

M. Jayaraman

APPELLANT

Vs

The Chief Engineer/Personnel, T.N.E. Board

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Citation : (2001) 1 MLJ 457

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Judgement

V.S. Sirpurkar, J.—Petitioner joined the service in the respondent Board in the post of temporary casual labourer on 3.3.1970. He became

a helper on 1.5.1974. Thereafter he became a Commercial Assistant on 1.10.1977 and ultimately he was promoted as Store Keeper II Grade on

26.3.1979. In the post of Store Keeper II, a seniority list was published, where he was shown at No. 215. He therefore made a representation

that his junior one Mr. D. Mani was shown senior to him whereas he should have been shown senior to Mr. D. Mani. Significantly enough the said

D. Mani was shown at No. 34 in the seniority list. It seems that this representation dated 31.5.1987 requesting the respondent/Board to refix his

seniority was accepted and by an order dated 14.1.1988 the petitioner was brought from 215 to 98(a). On the same date he was also promoted

as Store Keeper Grade I. The petitioner as soon as he got his promotion on 14.1.1988 made a detailed representation on 31.12.1990 and

pointed out that his seniority was initially omitted in the seniority list of Store Keeper Grade II and that in pursuance of his representation, he was

placed between K. Janardhanan and S. Venkateswarulu at 98a. He then pointed out that before the revision of seniority which took place on

14.1.1988 Venkateswarulu was promoted as Store Custodian Grade I on 23.9.1981 and his seniority was fixed at 129 in the list. He then pointed

out that had his seniority been correctly fixed in the post of Store Keeper Grade II, he would himself have been promoted in the place of

Venkateswarulu because he was senior to him. He also invited the attention of the authorities at the order modifying the seniority dated 14.1.1988.

He therefore claimed a promotion commensurate with his junior's promotion, that is Venkateswaraulu's promotion.

2. It seems that a afresh Seniority List was thereafter prepared, this time for Store Custodian Grade I by order dated 5.1.1991. In this the

petitioner was shown at 285 while Venkateswarulu was shown a 286. It is also slightly intriguing that one Sundaramoorthy was shown at 284

though earlier this Sundaramoorthy was fixed at 98(b) as compared to the petitioner who was fixed at 98(a) in the seniority list of SC II. Be that as

it may, the petitioner was happy with the seniority when he received a bolt from the blue and was informed by the order dated 21.4.1994 that his

seniority was refixed and from 285 he was relegated to 384(a). In this order very peculiarly it was stated as mentioned below:

The seniority assigned in the list communicated under reference cited is revised and refixed in respect of the following individuals as noted against

their names, which secured them their existing seniority indicating under column 3 for having not passed the accounts test for Subordinate Officers"

Part-I.

(Italics supplied)

The petitioner was stunned to receive this order as in fact he had passed the said test way back in the examination held on 17.11.1980. Not only

this but he had also received an incentive on account of his having passed the examination. He therefore made a representation on 28.4.1994.

Thereafter there appear to be some representations made on behalf of the unions also. However, he received a reply dated 19.7.1994 that the

order dated 21.4.1994 re-fixing the seniority of the petitioner from 285 to 384(a) was in order. It is this order which is challenged in this petition.

3. Learned Counsel very earnestly points out that in the first place the petitioner was not granted any hearing nor was any explanation called for

from the petitioner before taking the drastic action of relegating him back to

384(a) from his earlier No. 285. Learned Counsel points out that because of this the petitioner was going to lose his further promotion in the post of Store Supervisor. Learned Counsel points out from the record that the petitioner was not included in the panel of 20 persons for the post of Store Supervisor, which panel was prepared on 14.6.1994. Learned Counsel points out that barring three persons all other persons were junior to the petitioner as per his original seniority number at 285. Learned Counsel further points out that there was no justification for refixing of the seniority much less on the grounds that he has not passed the test, when he had passed the test good 14 years prior to that order.

4. Learned Counsel therefore says that the refixation, done behind the back of the petitioner without giving him an opportunity, that too only on wrong consideration, has to be quashed. Learned Counsel further says that the impugned order by which even the representations were rejected is a dumb order without giving any reasons.

5. Mr. Radhakrishnan, learned Counsel appearing on behalf of the Board, however, suggests that the petitioner's seniority was wrongly shown in the seniority list made for Store Custodian Grade I, because the petitioner had not passed the examination on the date when the panel was prepared. According to him, the panel was prepared on 12.11.1980. On that date the petitioner had not passed the Accounts Test though he appeared for the same on 17.11.1980 and was declared to have cleared immediately thereafter. Learned Counsel therefore says that it is because of this that the petitioner's seniority was affected. The second reason, according to the learned Counsel, is that the said Venkateswarulu had, however, passed the test earlier to 17.11.1980 and therefore Venkateswarulu was placed above the petitioner, though he was shown junior to the petitioner in the seniority list of Store Custodian Grade I. According to the learned Counsel this was a mistake and this was corrected. Apparently the argument is very attractive, however, lacks the merits.

6. The respondent before doing all these, could have given an opportunity to the petitioner to explain his stand. Again in paragraph 4 of the counter it is pointed out that thereafter the panels were made on 5/81, 11/82, 11/83, 5/84, 5/85, 1.4.1987, 11.1.1988 and on 26.10.1988. It is an admitted position that the petitioner was brought only in the panel dated

14.1.1988. Therefore, at least in the above-mentioned panels which were prepared before 14.1.1988 the petitioner's name was bound to be included because he was already a fit candidate having passed his examination held on 17.11.1980. But obviously that does not seem to have been done. At least from the counter it does not appear to have been done, on the other hand a totally incorrect statement is made in the counter that the petitioner's name was included in the panel approved on 1.4.1987 when his turn arose as per the seniority fixed in Memo dated 26.3.1987. This is a ghastly mistake on the part of the Board for the simple reason that the seniority fixed on 26.3.1987 was modified in favour of the petitioner by the order dated 14.1.1988 and he was brought to No. 98(a) from his original No. 215. Even at the stage when the counter was filed in the year 1994, the Board has taken the stand that the petitioner was promoted as per the seniority list dated 26.3.1987, then it is apparent that the subsequent upward movement of the petitioner has been ignored even at this stage. In short, exercise of fixing the seniority list is wholly incorrect, apart from the fact that it has been done behind the back of the petitioner and there would be no question of the petitioner being asked to be promoted only on the basis of 26.3.1987 seniority list when admittedly not only was his seniority moved upwards but he was also promoted on 14.1.1988. His promotion would be much more earlier, if his seniority in the post of SC II is considered to be 98(a) and not 215. Therefore, the whole exercise appears to be wrong and there does not appear to be application of mind on the part of the authorities, firstly in refixing the seniority of the petitioner and bringing him down in the subsequent post from 285 to 384(a) and thereafter refusing to consider his representations.

7. The petitioner, therefore, deserves to succeed. The impugned order rejecting the representation of the petition is set aside. The respondent is directed to refix the seniority in the light of the observations made in this judgment and after considering the petitioner's claim. Again for this purpose if it is necessary, the petitioner shall be heard. Exercise of refixing the seniority and grant of subsequent promotions, if any, shall be done within six months from today. The writ petition stands allowed. In the circumstances, costs of Rs. 500 is inflicted against the respondent.